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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46959-2019
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR42-18-7189
)	
GERRY WAYNE CROSS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Should Cross's appeal be dismissed because he waived his right to appeal his sentence?

Cross's Appeal Should Be Dismissed Because He Waived The Right To Appeal His Sentence

Pursuant to a plea agreement, Cross pled guilty to possession of methamphetamine and the state agreed to recommend "a sentence of two years fixed with 5 indeterminate for a total of 7 years to serve," and to not file a "habitual violator and/or drug doubling enhancement." (R., pp.36, 47.) As part of the plea agreement, Cross waived his right to appeal his sentence unless

the district court exceeded the state's sentencing recommendation. (R., p.47.) At sentencing, consistent with the plea agreement, the state recommended "two years fixed with five indeterminate for a total of seven, to serve." (3/18/19 Tr., p.8, Ls.17-18.) The district court imposed a unified sentence of only six years, with two years fixed. (R., pp.53-60.) Cross filed a notice of appeal timely from the judgment of conviction. (R., pp.64-68.)

"Mindful that he waived his right to appeal," Cross nevertheless asserts his sentence is excessive, in light of his substance abuse, purported desire to maintain sobriety, and friend and family support. (Appellant's brief, pp.3-4.) Cross's appeal should be dismissed because he specifically waived his right to appeal his sentence when he entered into the plea agreement.

The waiver of the right to appeal as a component of a plea agreement is valid and will be enforced if it was made voluntarily, knowingly and intelligently. State v. Murphy, 125 Idaho 456, 872 P.2d 719 (1994).

Pursuant to the plea agreement, signed by Cross, Cross waived his right to "appeal any issues in this case, including all matters involving the plea or the sentence and any rulings made by the court" as long as the district court did not exceed the state's sentencing recommendation for a unified sentence of seven years, with two years fixed. (R., p.47 (emphasis original).) At the guilty plea hearing, the district court specified that, as part of the plea agreement, Cross was waiving his right to appeal his sentence unless the court exceeded the state's sentencing recommendation. (1/7/19 Tr., p.9, L.21 – p.10, L.1.) The district court subsequently found that Cross had entered his plea knowingly, voluntarily, and intelligently, and Cross has not challenged that determination on appeal. (R., p.36; 1/7/19 Tr., p.11, Ls.18-24.) At sentencing, the district court imposed a unified sentence of six, with two years fixed – a lesser sentence than the one recommended by the state. (R., pp.53-60.) Because the district court did not exceed the

state's recommendation, Cross relinquished his right to appeal. To allow an appellate challenge in these circumstances would allow Cross to evade the appeal waiver in his plea agreement. Because Cross specifically waived his right to appeal his sentence, he cannot challenge his sentence on appeal and his appeal should be dismissed.

Conclusion

The state respectfully requests that this Court dismiss Cross's appeal because Cross waived his right to appeal his sentence.

DATED this 1st day of October, 2019.

/s/ Kenneth Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of October, 2019, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

ELIZABETH ANN ALLRED
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/s/ Kenneth Jorgensen
KENNETH K. JORGENSEN
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