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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47503-2019
Plaintiff-Respondent,)	
)	Latah County Case No.
v.)	CR29-19-1292
)	
EARL NORMAN CASEY,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Should Casey's appeal be dismissed because he waived his right to appeal his judgment and sentence?

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

Pursuant to a binding Rule 11 plea agreement, Casey pled guilty to felony violation of a no contact order, the state dismissed charges of domestic battery and possession of marijuana, and the parties stipulated to a unified sentence of three and one-half years, with one and one-half years fixed. (R., pp. 28-37.) The state was "free to argue that the Court relinquish jurisdiction"

and Casey was “free to make argument for probation or the Court retaining jurisdiction.” (R., pp. 28-29.) Additionally, Casey waived his “right to appeal the judgment and sentence” and his “right to seek a modification or reduction of sentence under Idaho Criminal Rule 35.” (R., p. 29.) Consistent with the plea agreement, the district court imposed a unified sentence of three and one-half years, with one and one-half years fixed, and retained jurisdiction. (R., pp. 53-55.) Casey filed a notice of appeal timely from the judgment of conviction. (R., pp. 59-61.)

“[M]indful that he agreed to waive his right to appeal his sentence as part of the plea agreement,” Casey nevertheless asserts that his sentence is excessive in light of his substance abuse, mental health issues, and “desire to change his life.” (Appellant’s brief, pp. 3-5.) Casey’s appeal should be dismissed because he specifically waived his right to appeal his judgment and 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 binding Rule 11 plea agreement, signed by Casey, Casey waived his “right to appeal the judgment and sentence.” (R., pp. 28-30.) At the guilty plea hearing, the district court specified that, as part of the plea agreement, Casey was waiving his right to appeal the court’s sentencing decision. (Tr., p. 88, L. 24 – p. 89, L. 7.) The district court subsequently found that Casey had entered his plea knowingly, voluntarily, and intelligently, and Casey has not challenged that determination on appeal. (Tr., p. 95, Ls. 15-17.) On appeal, Casey acknowledges that he waived his right to appeal “the judgment and sentence.” (Appellant’s brief, pp. 1-3, 5.) To allow an appellate challenge in these circumstances would allow Casey to evade the appeal waiver in his plea agreement. Because Casey specifically waived his right to

appeal his judgment and sentence, he cannot challenge his sentence on appeal and his appeal should be dismissed.

CONCLUSION

The state respectfully requests this Court to dismiss Casey's appeal because he waived his right to appeal his judgment and sentence.

DATED this 26th day of March, 2020.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of March, 2020, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

SALLY J. COOLEY
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/s/ Kenneth K. Jorgensen
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