

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 47441-2019
 Plaintiff-Respondent,)
) Kootenai County Case No.
 v.) CR28-18-14148
)
 LEANN FAYE SMITH,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

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STATEMENT OF THE CASE

Nature Of The Case

Leann Faye Smith appeals from the judgment of conviction entered upon her guilty plea to possession of heroin. Specifically, Smith challenges the district court's conclusion that she waived her right to file a motion to withdraw her guilty plea, and the district court's sentencing determination.

Statement Of The Facts And Course Of The Proceedings

A Coeur d'Alene police officer made contact with Smith and another individual who were parked in a WinCo parking lot. (R., p.17.) After finding Smith's answers to several questions to be suspicious, officers conducted a consensual search of the other individual's person. (Id.) After recovering a syringe from the other individual's pocket, and after obtaining admissions from that individual about his heroin use, officers searched the vehicle. (R., pp.17-18.) The officers recovered heroin and drug paraphernalia in the course of that search. (R., p.18.) Smith admitted ownership of the containers in which the contraband was found. (Id.) The state charged Smith with possession of heroin and drug paraphernalia. (R., pp.69-70.)

Pursuant to a plea agreement, Smith entered an *Alford* plea to the heroin possession charge and the state agreed to dismiss the drug paraphernalia charge. (2/12/19 Tr., p.11, L.6 – p.30, L.10; State's Exhibit 1.) The state also agreed to recommend a unified four-year sentence with two years fixed. (2/12/19 Tr., p.11, Ls.23-25.) Smith agreed "to waive appeal as a right to the conviction,

as well as her ability to withdraw the guilty plea.” (2/12/19 Tr., p.11, Ls.17-21; see also State’s Exhibit 1.)

Prior to sentencing, despite her waiver, Smith filed a motion to withdraw her guilty plea. (R., pp.84-85.) The motion was supported by a sworn affidavit in which Smith alleged, among other things, that she was unable to effectively communicate with her attorney throughout the proceeding, that she did not remember being informed of certain terms of the plea agreement before the change of plea hearing, that she did not understand the proceedings or the conditions of the plea agreement, and that she agreed to accept the state’s plea offer even though she “felt in [her] heart it was the wrong thing to do.” (R., pp.86-89.)

At the subsequent hearing on the motion, Smith argued that her plea was not knowingly, intelligently, or voluntarily made. (4/29/19 Tr., p.41, L.6 – p.43, L.20.) The state objected to the motion. (4/29/19 Tr., p.44, L.13.) The state submitted into evidence an audio recording of the change of plea hearing and noted that Smith’s calm demeanor and the district court’s thorough plea colloquy demonstrated that Smith’s plea was voluntary. (4/29/19 Tr., p.44, Ls.13-23; State’s Exhibit 2.) The district court denied Smith’s motion. (4/29/19 Tr., p.52, L.10 – p.54, L.15.) The court found that Smith knowingly and voluntarily waived her right to request that her guilty plea be withdrawn; and knowingly, voluntarily, and intelligently entered into the plea agreement. (4/29/19 Tr., p.53, L.11 – p.54, L.15.)

After both parties recommended that Smith be placed on probation (8/12/19 Tr., p.76, L.24 – p.77, L.3; p.78, Ls.4-12), the district court imposed a unified four-year sentence with two years

fixed, suspended the sentence, and placed Smith on probation for two years (R., pp.103-107; 8/12/19 Tr., p.81, Ls.16-20). Smith timely appealed. (R., pp.115-118.)

ISSUES

Smith states the issues on appeal as:

- I. Are Ms. Smith's waivers of her right to appeal and her right to file a motion to withdraw the plea invalid and unenforceable, because her plea was not knowing, intelligent, and voluntary?
- II. Did the district court abuse its discretion when it denied Ms. Smith's motion to withdraw her guilty plea, because her plea was not knowing, intelligent, and voluntary?
- III. Did the district court abuse its discretion when it imposed a unified sentence of four years, with two years fixed, upon Ms. Smith following her plea of guilty to possession of a controlled substance?

(Appellant's brief, p.8.)

The state rephrases the issues as:

1. Does the record demonstrate that Smith's waivers of her right to appeal her conviction and right to file a motion to withdraw her guilty plea were both knowing, intelligent, and voluntary? In the alternative, has Smith failed to show that the district court abused its discretion in additionally denying her motion to withdraw her guilty plea on its merits?
2. Has Smith failed to show that the district court abused its sentencing discretion?

ARGUMENT

I.

The Record Demonstrates That Smith's Waivers Of Her Right To Appeal Her Conviction And Her Right To File A Motion To Withdraw Her Guilty Plea Were Knowing, Intelligent, And Voluntary

A. Introduction

Smith contends that the district court erred in concluding that she validly waived her right to file a motion to withdraw her guilty plea; and then abused its discretion by also denying the motion on its merits. (Appellant's brief, pp.9-15.) Smith's contentions fail because a review of the record reveals that her guilty plea and accompanying waivers of her rights to appeal her conviction and to file a motion to withdraw her guilty plea were all entered voluntarily, knowingly, and intelligently.

B. Smith's Waivers Of Her Right To Appeal And Right To File A Motion To Withdraw Her Guilty Plea Were Validly Entered

Defendants may waive their right to appeal as a term of a plea agreement. State v. Straub, 153 Idaho 882, 885, 292 P.3d 273, 276 (2012). Such a waiver is enforceable if the record shows that it was voluntarily, knowingly, and intelligently made. State v. Cope, 142 Idaho 492, 496, 129 P.3d 1241, 1245 (2006). Appellate courts employ the same analysis used to determine the validity of any guilty plea when evaluating the enforceability of a waiver of the right to appeal provided as part of a plea agreement. State v. Murphy, 125 Idaho 456, 457, 872 P.2d 719, 720 (1994).

When the validity of a guilty plea is challenged on appeal, the appellate court conducts an independent review of the record. State v. Hawkins, 115 Idaho 719, 720, 769 P.2d 596, 597 (Ct.

App. 1989). Whether a plea is voluntary and understood entails inquiry into three areas: (1) whether the plea was voluntary in the sense that the defendant understood the nature of the charges and was not coerced; (2) whether the defendant knowingly and intelligently waived the right to a jury trial, to confront accusers, and to refrain from self-incrimination; and (3) whether the defendant understood the consequences of pleading guilty. State v. Colyer, 98 Idaho 32, 34, 557 P.2d 626, 628 (1976). If the evidence is conflicting as to the circumstances surrounding the guilty plea, the appellate court will accept the trial court's findings of fact supported by substantial evidence. Hawkins, 115 Idaho at 720-721, 769 P.2d at 597-598. However, the Court will freely review the trial court's application of constitutional requirements to the facts found. Id. at 721, 769 P.2d at 598

As Smith notes on appeal (Appellant's brief, p.10), there does not appear to be any published Idaho case on the standard for appellate review of a district court's application of a defendant's waiver of the right to file a motion to withdraw a guilty plea. The state agrees with Smith's submission on appeal that the above standards for determining the validity of a guilty plea, or appellate waiver associated with a guilty plea, should also apply to a waiver of the right to file a motion to withdraw a guilty plea.

At the change of plea hearing, Smith's counsel represented that Smith's plea agreement with the state included a term that Smith agreed to "waive appeal as a right to the conviction, as

well as her ability to withdraw the guilty plea pursuant to Idaho Criminal Rule 34.^[1]” (2/12/19 Tr., p.11, Ls.11-21.) The written plea offer prepared by the state was consistent with this representation. (State’s Exhibit 1.) A review of the record demonstrates that Smith’s guilty plea, appellate waiver, and waiver of her right to file a motion to withdraw her guilty plea were all entered knowingly, intelligently, and voluntarily, and were thus valid.

The district court engaged in a thorough colloquy with Smith prior to accepting Smith’s pleas and the accompanying waivers. The colloquy specifically referenced Smith’s waiver of her right to file a motion to withdraw her guilty plea. (2/12/19 Tr., p.13, Ls.10-16.) In this colloquy, Smith confirmed that she had enough time to consult with her lawyer and felt comfortable and ready to plead guilty. (2/12/19 Tr., p.12, L.21 – p.13, L.2.) When Smith acknowledged that she “sometimes” had trouble communicating with her lawyer, the court initiated a more-detailed questioning to address that response. (2/12/19 Tr., p.25, L.7 – p.26, L.8.) This included five follow-up questions to which Smith responded that: her communication with counsel was good enough for her to understand what she was doing that day; she did not need any more time with her counsel to work out any communication issues; despite the indication that she had some communications issues at some point, she still did ultimately understand what counsel was saying

¹ Smith subsequently filed a motion to withdraw her guilty plea pursuant to I.C.R. 34. (R., pp.84-85.) At the hearing on the motion, Smith informed the court that her motion was “more appropriate under Idaho Rule 33(c).” (4/29/19 Tr., p.40, Ls.5-8.) It appears that the parties’ reference to I.C.R. 34 was initiated by a typo on the state’s amended pretrial settlement order. (State’s Exhibit 1; see also 4/29/19 Tr., p.51, L.20 – p.52, L.3; p.53, Ls.6-10.) Smith has not argued below or on appeal that these references to I.C.R. 34 rendered her subsequent I.C.R. 33(c) motion to be outside the scope of her waiver. (See generally Appellant’s brief; 4/29/19 Tr.)

to her; and that any questions she had were answered by her counsel. (Id.) Smith also informed the court that she was not “emotionally stressed” to the point that it was affecting her ability to think clearly, and that she believed her plea was being made “freely and voluntarily.” (2/12/19 Tr., p.27, Ls.8-11; p.28, Ls.10-12.) Finally, the court explained to Smith that “[s]ometimes people will come back to [c]ourt and ask to withdraw their guilty plea,” and assert that they only entered the plea agreement in “despair” caused by their counsel’s bad performance. (2/12/19 Tr., p.29, Ls.7-18.) Smith responded that this was not the case with her. (2/12/19 Tr., p.29, Ls.16-19.)

In the hearing on Smith’s subsequent motion to withdraw her guilty plea, the district court referenced this thorough colloquy and Smith’s responses. (4/29/19 Tr., p.39, Ls.7-16.) An audio recording of the relevant portion of the change of plea hearing was entered into evidence and published to the court at the hearing, giving the court the opportunity to review the manner in which Smith answered the questions posed to her. (4/29/19 Tr., p.44, L.13 – p.46, L.24; State’s Exhibit 2.) The court – which was presided over by the same district court judge who presided over the change of plea hearing – then made a specific finding that the assertions made in Smith’s affidavit, which contradicted her statements made at the change of plea hearing, were not credible and carried little weight in its determination. (4/29/19 Tr., p.53, L.17 – p.54, L.1.) This Court is bound by this finding because it is supported by the substantial evidence contained in the audio recording of the change of plea hearing. See Hawkins, 115 Idaho at 720-721, 769 P.2d at 597-598. Further, a review of the affidavit itself (R., pp.86-89), reveals that several of the assertions contained therein, including Smith’s explanation for why she missed a court hearing, and her

assertion that she “felt in [her] heart” that entering the plea “was the wrong thing to do,” do not speak to the voluntariness of the plea and Smith’s waivers.

Because the record demonstrates that Smith’s guilty plea and accompanying waiver of her right to file a motion to withdraw her guilty plea were knowingly, voluntarily, and intelligently entered, Smith has failed to show that the district court erred in applying this valid waiver to her motion to withdraw her plea. In the alternative, for all of the same reasons, this Court should not consider this claim due to Smith’s validly-entered waiver of her appellate rights.²

C. Alternatively, The District Court Acted Well Within Its Discretion To Conclude That Smith’s Motion To Withdraw Her Guilty Plea Also Failed On Its Merits

In addition to concluding that Smith waived her right to file a motion to withdraw her guilty plea, the district court also concluded that the motion failed on its merits. (4/29/19 Tr., p.54, Ls.8-15.) Smith has failed to show that the district court abused its discretion.

When the right to file such a motion has not been waived, a motion to withdraw a guilty plea may be made before sentence is imposed. I.C.R. 33(c). The presentence withdrawal of a guilty plea is not an automatic right, however. State v. Carrasco, 117 Idaho 295, 298, 787 P.2d 281, 284 (1990); State v. Hanslovan, 147 Idaho 530, 535, 211 P.3d 775, 780 (Ct. App. 2008). The defendant bears the burden of proving, in the district court, that the plea should be withdrawn.

² The state submits that an appeal waiver bars appeals from the denial of a motion to withdraw a guilty plea. See United States v. McGuire, 796 F.3d 712, 715 (7th Cir. 2015); United States v. Salas-Garcia, 698 F.3d 1242, 1255 (10th Cir. 2012). However, the state acknowledges that the Idaho Court of Appeals has previously held that an appeal waiver does not bar an appeal that, if decided in the appellant’s favor, would render the waiver unenforceable. See State v. Allen, 143 Idaho 267, 270, 141 P.3d 1136, 1139 (Ct. App. 2006).

Hanslovan, 147 Idaho at 535, 211 P.3d at 780; Griffith v. State, 121 Idaho 371, 374-375, 825 P.2d 94, 97-98 (Ct. App. 1992). In ruling on a motion to withdraw a guilty plea, the district court must determine, as a threshold matter, whether the plea was entered knowingly, intelligently and voluntarily. Hanslovan, 147 Idaho at 536, 211 P.3d at 781; State v. Rodriguez, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct. App. 1990). As a matter of constitutional due process, a plea is knowing and voluntary if it is “entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel.” Brady v. United States, 397 U.S. 742, 755 (1970).

If the plea was voluntary, in the constitutional sense, then the court must determine whether other just cause exists to allow the defendant to withdraw the plea. Hanslovan, 147 Idaho at 536, 211 P.3d at 781. The good faith, credibility, and weight of the defendant’s assertions in support of his motion to withdraw his plea are matters for the trial court to decide. Id. at 537, 211 P.3d at 782.

“Appellate review of the denial of a motion to withdraw a plea is limited to whether the district court exercised sound judicial discretion as distinguished from arbitrary action.” Hanslovan, 147 Idaho at 535-536, 211 P.3d at 780-781 (citing State v. McFarland, 130 Idaho 358, 362, 941 P.2d 330, 334 (Ct. App. 1997)).

In this case, Smith has not argued on appeal that any “other just cause” presented to the district court justified the withdrawal of her guilty plea. (See Appellant’s brief, p.12.) Instead, Smith asserted only that her plea was not knowingly, intelligently, and voluntarily entered. (Id.) For the reasons set forth above, a review of the record contradicts this assertion. Therefore, even

if her waivers did not bar her attempt to withdraw her plea, Smith has failed to show that the district court abused its discretion in additionally denying the motion on its merits.

II.

Smith Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Smith contends that the district court abused its discretion by imposing an excessive sentence for heroin possession.³ (Appellant's brief, pp.15-18.) However, Smith cannot show she is entitled to relief because she has failed to establish that the district court's suspended unified four-year sentence with two years fixed for heroin possession was excessive considering the objectives of sentencing, Smith's extensive criminal history, and other factors before the court.

B. Standard Of Review

When a sentence is within statutory limits, the appellate court will review only for an abuse of discretion. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). The appellant has the burden of demonstrating that the sentencing court abused its discretion. Id.

C. The District Court Acted Well Within Its Sentencing Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence is excessive. Id. To establish that her

³ Smith waived her appellate rights "as to the conviction." (2/12/19 Tr., p.11, Ls.16-18; State's Exhibit 1.) Therefore, it appears that Smith's challenge to the district court's sentencing determination is outside the scope of that waiver.

sentence is excessive, Smith must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. *Id.*; see also *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982) (setting forth these sentencing objectives). “When considering whether the district court abused its sentencing discretion, [the appellate courts] review the entire sentence[.]” *State v. Bailey*, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citation omitted). However, the appellate court will “presume that the defendant’s term of confinement will probably be the fixed portion of the sentence, because whether or not the defendant’s incarceration extends beyond the fixed portion of the sentence will be within the sole discretion of the parole board.” *Id.* (citation omitted).

In this case, prior to imposing its sentence, the district court cited the relevant sentencing factors. (8/12/19 Tr., p.79, Ls.7-20.) The court then referenced Smith’s extensive criminal history, but ultimately decided to follow the state’s sentencing recommendation despite its observation that the recommendation was “a lenient one” under the circumstances. (8/12/19 p.80, L.3 – p.81, L.15.)

As the district court correctly observed, Smith has an extensive criminal history. Since 1997, Smith has approximately 12 felony criminal convictions, mostly involving fraud-related crimes committed in Washington. (PSI, pp.11-18.) Smith also has approximately 11 misdemeanor convictions for crimes including domestic violence, theft, and trespass. (*Id.*) Smith’s PSI further indicates numerous probation violations. (*Id.*)

Despite this criminal history and previous failures on probation, the district court followed the state's recommendation to place Smith on probation again.⁴ (8/12/19 Tr., p.81, Ls.12-20.) The state's recommendation of a suspended unified four-year sentence with two years fixed (for a conviction on a charge which carried a maximum sentence of seven years incarceration, I.C. § 37-2732(c)(1)), was different from Smith's sentencing recommendation only in that the latter included one fewer suspended fixed term of incarceration and one fewer indeterminate year (8/12/19 Tr., p.78, Ls.5-12). Smith has failed to demonstrate that these additional two suspended years of incarceration (one fixed, one indeterminate), rendered the sentence excessive, particularly considering her extensive criminal record.

On appeal, Smith argues that in imposing its sentence, the district court did not adequately consider mitigating factors including Smith's mental health and substance abuse issues, her documented efforts to treat these conditions, her history of trauma including physical abuse perpetrated by her father, and her positive contributions to the community. (Appellant's brief, pp.15-18.) However, Smith has pointed to no portions of the record indicating that the district court failed to adequately consider these things, and there is no such indication in the record itself.

The district court's suspended unified four-year sentence with two years fixed was entirely reasonable considering the objectives of sentencing, Smith's criminal history, and other factors

⁴ Though not reflected in the amended written plea offer entered as an exhibit at the hearing on the motion to withdraw Smith's guilty plea (see State's Exhibit 1), defense counsel represented that the state's initial plea offer also included an agreement to recommend probation, but that this term was withdrawn after Smith failed to appear at a court hearing. (2/12/19 Tr., p.17, Ls.15-19.) Nonetheless, the state recommended, at the sentencing hearing, that the court place Smith on probation. (8/12/19, p.76, L.21 – p.77, L.3.)

before the court. Smith has therefore failed to demonstrate that the district court abused its sentencing discretion.

CONCLUSION

The state respectfully requests that this Court affirm the judgment of conviction entered upon Smith's guilty plea to heroin possession.

DATED this 17th day of July, 2020.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of July, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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