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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47747-2020
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR42-19-2186
)	
KENNETH DWAYNE SARTIN, JR.,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Should Sartin’s appeal be dismissed because he waived his rights to appeal his sentence and to file a Rule 35 motion for reduction of sentence?

Sartin’s Appeal Should Be Dismissed Because He Waived The Rights To Appeal His Sentence And To File A Rule 35 Motion

In March 2019, the state charged Sartin with aggravated assault with a deadly weapon enhancement, felony malicious injury to property, two counts of misdemeanor injury to a child, and exhibition/use of a deadly weapon. (R., pp. 20-24.) Pursuant to a plea agreement, Sartin pled guilty to aggravated assault with a deadly weapon enhancement and to the two counts of

misdemeanor injury to a child, and the state agreed to dismiss the remaining charges, “not to file two counts of violation of a No Contact Order,” and agreed to recommend a unified sentence of eight years, with four years fixed, “to serve.” (R., pp. 45-46.) As part of the plea agreement, Sartin waived both his right to file a Rule 35 motion “except as to an illegal sentence,” and his right to appeal his sentence unless the district court exceeded the determinate portion of the state’s sentencing recommendation. (R., p. 46.) Consistent with the plea agreement, the district court imposed a unified sentence of eight years, with four years fixed, for aggravated assault with a deadly weapon enhancement, and concurrent six-month sentences for the two counts of injury to a child. (R., pp. 94-101.) Approximately two months later, Sartin filed a timely Rule 35 motion for reduction of sentence, which the district court denied. (R., pp. 102-05.) Sartin filed a notice of appeal timely only from the district court’s order denying his Rule 35 motion. (R., pp. 106-10.)

“Mindful of the fact that [his] plea agreement contained a waiver of his right to seek a sentence reduction pursuant to Rule 35, as well as the fact that he did not present any new or additional information in support of his Rule 35 motion,” Sartin nevertheless asserts that the district court abused its discretion by denying his Rule 35 request for leniency in light of his mental health problems, alcohol abuse, “difficult upbringing,” acceptance of responsibility, and because he started a charity to help veterans suffering from PTSD. (Appellant’s brief, pp. 3-5.) Sartin’s appeal should be dismissed because he specifically waived his rights to appeal his sentence and to file a Rule 35 motion for reduction of 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). The waiver of the right to appeal a sentence incorporates the right to appeal from the denial of a Rule 35 motion for reduction of sentence. See State v. Rodriguez, 142 Idaho 786, 787, 133 P.3d 1251, 1252 (Ct. App. 2006); State v. Taylor, 157 Idaho 369, 372-73, 336 P.3d 302, 305-06 (Ct. App. 2014) (Defendant waived his right to appeal the denial of his motion for reduction in sentence, where defendant's plea agreement stated that he waived his right to file a motion for reduction of sentence and his right to appeal issues involving sentencing in the case).

Pursuant to the plea agreement, signed by Sartin, Sartin waived both his right to file a Rule 35 motion (except as to an illegal sentence) and 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," unless the district court exceeded the four-year determinate portion of the state's recommended sentence. (R., p. 46 (underline original).) Because the district court did not exceed the state's recommendation for a unified sentence of eight years, with four years fixed, Sartin did not retain his right to appeal. (Tr., p. 20, L. 23 – p. 21, L. 1; p. 36, Ls. 13-18; R., pp. 94-101.)

At the guilty plea hearing, the district court found that Sartin had entered his plea knowingly, voluntarily and intelligently, and Sartin has not challenged that determination on appeal. (R., p. 45.) Instead, Sartin acknowledges, on appeal, "the fact that his plea agreement contained a waiver of his right to file a Rule 35 motion or an appeal." (Appellant's brief, p. 4.) To allow an appellate challenge in these circumstances would allow Sartin to evade the appeal waiver in his plea agreement. Because Sartin specifically waived his rights both to appeal his sentence and to file a Rule 35 motion for sentence reduction, he cannot challenge the denial of his Rule 35 motion for a reduction of sentence on appeal and his appeal should be dismissed.

CONCLUSION

The state respectfully requests this Court to dismiss Sartin's appeal because he waived his rights to appeal his sentence and to file a Rule 35 motion for reduction of sentence.

DATED this 19th day of August, 2020.

/s/ Kenneth K. Jorgensen
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Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of August, 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:

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/s/ Kenneth K. Jorgensen
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