

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, )  
 ) Nos. 44330, 44496, 44753 & 44754  
 Plaintiff-Respondent, )  
 ) Latah County Case No.  
 v. ) CR-2015-95  
 )  
 JOHN LEE )  
 AKA KANE W. GRZEBIELSKI, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF LATAH**

\_\_\_\_\_  
**HONORABLE JOHN R. STEGNER**  
District Judge  
\_\_\_\_\_

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# TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUES .....	4
ARGUMENT .....	5
I.    Lee Has Failed To Show Error In The District Court’s Denial Of His Motion To Withdraw His Pleas Because The Pleas Were Entered Knowingly, Intelligently And Voluntarily .....	5
A.    Introduction.....	5
B.    Standard Of Review .....	5
C.    The District Court’s Finding That The Pleas Were Voluntary Is Supported By Substantial Evidence.....	6
II.   This Court Should Dismiss Lee’s Challenges To His Sentences, Imposition Of A Civil Fine, And Denial Of His Rule 35 Motion Because He Waived His Appeal Rights As To These Issues .....	8
CONCLUSION.....	9
CERTIFICATE OF SERVICE .....	10

**TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PAGE</u></b>
<u>Arambarri v. Armstrong</u> , 152 Idaho 734, 274 P.3d 1249 (2012).....	9
<u>Brady v. United States</u> , 397 U.S. 742 (1970).....	7
<u>Gabourie v. State</u> , 125 Idaho 254, 869 P.2d 571 (Ct. App. 1994).....	5
<u>Hoover v. State</u> , 114 Idaho 145, 754 P.2d 458 (Ct. App. 1988).....	6
<u>Schmidt v. State</u> , 103 Idaho 340, 647 P.2d 796 (Ct. App. 1982).....	6
<u>State v. Abdullah</u> , 158 Idaho 386, 348 P.3d 1 (2014).....	9
<u>State v. Carrasco</u> , 117 Idaho 295, 787 P.2d 281 (1990) .....	6
<u>State v. Cope</u> , 142 Idaho 492, 129 P.3d 1241 (2006) .....	8
<u>State v. Gomez</u> , 124 Idaho 177, 857 P.2d 656 (Ct. App. 1993) .....	6
<u>State v. Hanslovan</u> , 147 Idaho 530, 211 P.3d 775 (Ct. App. 2008).....	5
<u>State v. Holland</u> , 135 Idaho 159, 15 P.3d 1167 (2000).....	5
<u>State v. McFarland</u> , 130 Idaho 358, 941 P.2d 330 (Ct. App. 1997) .....	5
<u>State v. Murphy</u> , 125 Idaho 456, 872 P.2d 719 (1994).....	8
<u>State v. Stone</u> , 147 Idaho 330, 208 P.3d 734 (Ct. App. 2009).....	6
<u>State v. Straub</u> , 153 Idaho 882, 292 P.3d 273 (2013) .....	8
<u>State v. Thomas</u> , 154 Idaho 305, 297 P.3d 268 (Ct. App. 2013) .....	6
 <b><u>RULES</u></b>	
I.C.R. 11 .....	6, 8
I.C.R. 33(c) .....	6
I.C.R. 35 .....	8

## STATEMENT OF THE CASE

### Nature Of The Case

John Lee, a.k.a. Kane W. Grzebielski, appeals from his judgment of conviction for three counts of first-degree murder and one count of aggravated battery and the denial of several post-judgment motions. On appeal he challenges his sentence, the fines imposed, the denial of his motion to reduce his sentence, and the denial of his motion to withdraw his guilty pleas.

### Statement Of The Facts And Course Of The Proceedings

Lee murdered his landlord, David Trail, the manager of an Arby's restaurant, Belinda Niebuhr, and his adoptive mother, Terry Grzebielski, by shooting them repeatedly and at close range. (Supp. R., p. 108.) He also shot and wounded Michael Chin, who happened to be in Trail's office when Lee murdered Trail. (Id.) Lee stated that he went to Trail's office and shot him "until he stopped [moving]" and shot Chin "twice but I was out of bullets by then." (PSI, p. 13; Tr., p. 26, Ls. 5-11.) He blamed his landlord for the noises that kept him up at night. (PSI, p. 14.) He then drove to Arby's and shot the manager. (PSI, p. 13; Tr., p. 26, Ls. 12-20.) He tried to shoot another employee of the restaurant "but the gun didn't fire." (Id.) He picked the Arby's because he felt they had harassed him on a previous visit. (PSI, p. 14; Tr., p. 24, Ls. 23-24.) He then went to his mother's house and "shot her multiple times." (PSI, p. 13; Tr., p. 26, Ls. 21-25.) Lee stated that he had been angry with his mother, but had not specifically thought of harming her in the past. (PSI, p. 15.) After shooting his mother Lee fled to Washington, where he was apprehended after a high speed chase. (Supp. R., p. 108.)

The state charged Lee with three counts of first-degree murder and one count of aggravated battery. (R., vol. II, pp. 255-58.) Lee pled guilty to the charges. (R., vol. II, pp. 300-312; Tr., p. 10, L. 9 – p. 22, L. 16; p. 27, L. 14 – p. 53, L. 14.) The terms of the plea agreement included that the parties would seek concurrent (unspecified) sentences of incarceration (with the state waiving the death penalty); that Lee would provide a factual statement of his offenses and cooperate in sentencing evaluations; and a waiver by Lee of his right to appeal and to file a motion for reconsideration of the sentence. (R., vol. II, pp. 300-312.) The district court imposed concurrent sentences of fixed life for the murders and 15 years for the aggravated battery, with \$5,000 civil fines on each count. (R., vol. II, pp. 360-65, 390-97; Tr. p. 156, L. 6 – p. 159, L. 14.)

Lee filed a notice of appeal. (R., vol. II, pp. 367-74.) In the notice of appeal Lee expressed that he wished his guilty pleas “invalidated” because “untreated” mental illnesses “effected [sic] [his] decision making.” (R., vol. II, p. 369.) The state moved to dismiss the appeal, asserting the appeal waiver in the plea agreement foreclosed the appeal. (Motion to Dismiss Appeal, #44330 (August 1, 2016).) Lee objected to dismissal of the appeal, contending he wanted the record prepared to review whether he would challenge his pleas as not knowing, intelligent and voluntary on the entire record. (Objection to Motion to Dismiss Appeal, #44330 (August 9, 2016).) The Idaho Supreme Court denied the motion to dismiss the appeal. (R., vol. II, p. 421.)

Lee filed a motion for reconsideration of his sentences. (R., vol. II, pp. 422-24.) The district court denied the motion on the basis that Lee waived the filing of a Rule 35 motion, also noting it would have denied the motion on the merits. (R., vol. II, pp. 450-55.)

Lee moved to withdraw his guilty pleas, asserting he was “not in [his] right state of mind” when he pled guilty. (R., vol. II, pp. 461-65; R., vol. III, pp. 546-54, 587-95.) The district court held an evidentiary hearing on the motion to withdraw the guilty pleas. (See generally Tr., pp. 163-384.) The district court denied the motion, finding no manifest injustice because the plea agreement was reasonable, Lee was competent to enter the pleas, and the pleas were entered freely and voluntarily and Lee understood what he was doing. (Supp. R., pp. 107-24.)

## ISSUES

Lee states the issues on appeal as:

1. Did the district court err in denying Mr. Lee's Motion to Withdraw Guilty Plea?
2. Did the district court abuse its discretion by imposing three concurrent fixed life sentences upon Mr. Lee's pleas of guilty to three counts of first degree murder?
3. Did the district court abuse its discretion in assessing four \$5,000 fines against Mr. Lee for his three counts of first degree murder and one count of aggravated battery?
4. Did the district court abuse its discretion in denying Mr. Lee's Rule 35 Motion?

(Appellant's brief, p. 8.)

The state rephrases the issues as:

1. Has Lee failed to show error in the district court's denial of his motion to withdraw his pleas because the pleas were entered knowingly, intelligently and voluntarily?
2. Should this Court dismiss Lee's challenges to his sentences, imposition of a civil fine, and denial of his Rule 35 motion because he waived his appeal rights as to these issues?

## ARGUMENT

### I.

#### Lee Has Failed To Show Error In The District Court's Denial Of His Motion To Withdraw His Pleas Because The Pleas Were Entered Knowingly, Intelligently And Voluntarily

##### A. Introduction

The district court denied Lee's post-judgment motion to withdraw his guilty pleas, finding that the guilty pleas were constitutionally valid as they were knowing, intelligent and voluntary. (Supp. R., pp. 107-24.) Lee claims the district court erred. (Appellant's brief, pp. 9-15.) He does not challenge the district court's findings that his pleas were knowing and intelligent. (Appellant's brief, pp. 10-13.) However, relying primarily on testimony the district court specifically rejected, Lee contends his pleas were not voluntary, but instead the product of his paranoia. (Appellant's brief, pp. 12-15.) Lee has failed to show clear error in the district court's factual finding that the pleas were voluntary.

##### B. Standard Of Review

"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." State v. Hanslovan, 147 Idaho 530, 535-536, 211 P.3d 775, 780-781 (Ct. App. 2008) (citing State v. McFarland, 130 Idaho 358, 362, 941 P.2d 330, 334 (Ct. App. 1997)). An appellate court will defer to the trial court's factual findings if they are supported by substantial competent evidence. State v. Holland, 135 Idaho 159, 15 P.3d 1167 (2000); Gabourie v. State, 125 Idaho 254, 869 P.2d 571 (Ct. App. 1994).



C. The District Court's Finding That The Pleas Were Voluntary Is Supported By Substantial Evidence

Generally, a motion for withdrawal of a guilty plea will not be granted after sentencing. State v. Carrasco, 117 Idaho 295, 298, 787 P.2d 281, 284 (1990); Hoover v. State, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct. App. 1988). A court may permit a defendant to withdraw his guilty plea after sentencing only upon a satisfactory showing by the defendant that withdrawal of the guilty plea is necessary to correct a “manifest injustice.” I.C.R. 33(c). The strictness of the standard is justified by the legal weight of the guilty plea. “A plea of guilty has the same force and effect as a judgment rendered after a full trial on the merits.” Schmidt v. State, 103 Idaho 340, 346, 647 P.2d 796, 802 (Ct. App. 1982). The stricter standard also insures that the defendant is not “encouraged to plead guilty to test the weight of potential punishment and withdraw the plea if the sentence is unexpectedly severe.” State v. Stone, 147 Idaho 330, 333, 208 P.3d 734, 737 (Ct. App. 2009). The defendant has the burden of proving that the plea should be withdrawn. Id.; State v. Gomez, 124 Idaho 177, 178, 857 P.2d 656, 657 (Ct. App. 1993).

Manifest injustice is established where a plea is “not taken in compliance with constitutional due process standards.” State v. Thomas, 154 Idaho 305, 307, 297 P.3d 268, 270 (Ct. App. 2013). Constitutional due process standards require “that a guilty plea be made voluntarily, knowingly and intelligently,” as shown by the “record of the entire proceedings, including reasonable inferences drawn therefrom.” Id. at 307, 297 P.3d at 270 (citing I.C.R. 11(c)). A plea “entered by one fully aware of the direct consequences ... must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor’s

business (e.g. bribes).” Brady v. United States, 397 U.S. 742, 755 (1970) (internal quotations omitted).

The district court specifically rejected the argument that Lee was “suffering a mental illness that overcame his volition.” (R., p. 117.) It rejected the conclusion of the defense expert, Dr. Minagawa, that Lee’s pleas were not voluntary because they were “manifestations of his psychiatric condition.” (R., pp. 117-18.) The district court found that Lee was “highly intelligent” and competent. (R., pp.118-19.) In entering his pleas Lee denied any coercion and testified that he was entering the pleas freely and voluntarily, and the district court so found and affirmed. (R., p. 119.) The district court found Lee “thoughtful and analytical” rather than “someone whose volition has been overcome by mental illness.” (R., p. 120.) Lee’s desire to withdraw his guilty pleas was because he developed “cold feet” after receiving a longer sentence than he hoped to. (R., pp. 120-21.) Citing the evidence that Lee entered his pleas voluntarily, including the evidence of two psychologists who evaluated Lee and concluded his pleas were voluntary, the district court concluded Lee had failed to prove a manifest injustice. (R., pp. 121-23.)

Lee acknowledges most of the district court’s findings, but asserts they are “of very little, if any, importance.” (Appellant’s brief, p. 13.) To the contrary, the district court’s conclusion that the evidence did not demonstrate that Lee’s mental illness had overcome his volition was of central importance. Lee’s claim that evidence of his intelligence, mental competence, understanding of the consequences of his pleas, that he was not psychiatrically compromised in his ability to make decisions about his case, and that he met all four psychiatric categories of volition in entering his pleas was not “important” fails as a matter of law and of fact.

The evidence supporting the district court's conclusion that Lee entered his pleas voluntarily is substantial. Lee's wish that the district court had weighed the evidence differently falls short of meeting his burden of demonstrating an abuse of discretion.

## II.

### This Court Should Dismiss Lee's Challenges To His Sentences, Imposition Of A Civil Fine, And Denial Of His Rule 35 Motion Because He Waived His Appeal Rights As To These Issues

"A defendant may waive his right to appeal as part of a guilty plea agreement." State v. Straub, 153 Idaho 882, 885, 292 P.3d 273, 276 (2013); see also I.C.R. 11(f)(1) ("The prosecuting attorney and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement, which may include a waiver of the defendant's right to appeal the judgment and sentence of the court . . ."). When the waiver of the right to appeal is included as a term of a plea agreement, such waiver is enforceable as long as the record shows that it was voluntarily, knowingly, and intelligently made. State v. Cope, 142 Idaho 492, 496, 129 P.3d 1241, 1245 (2006); State v. Murphy, 125 Idaho 456, 457, 872 P.2d 719, 720 (1994).

In his plea agreement Lee recognized his "right to appeal the judgment" and his "right to seek a modification or reduction of sentence" under I.C.R. 35 and waived those rights. (R., vol. II, p. 301.) Because, as set forth in Section II, *supra*, Lee has shown no error in the district court's conclusion that his pleas were voluntary, the waiver is enforceable and this appeal should be dismissed as to the waived issues.

Lee argues that this Court should find his plea agreement involuntary entered and thus reach the merits of his appellate issues despite the waiver. (Appellant's brief, pp. 15-16.) However, if Lee is correct and the guilty pleas must be vacated then so must his

convictions and the sentences, and his appellate challenges to his sentences and the denial of his post-judgment Rule 35 motion are moot. State v. Abdullah, 158 Idaho 386, 462, 348 P.3d 1, 77 (2014) (“An issue is moot . . . if ‘a favorable judicial decision would not result in any relief or the party lacks a legally cognizable interest in the outcome.’” (quoting Arambarri v. Armstrong, 152 Idaho 734, 739, 274 P.3d 1249, 1254 (2012))). If the plea agreement was voluntarily entered, the appeal and Rule 35 waivers must be enforced. If the plea agreement was not voluntarily entered, then the challenges to the judgment and Rule 35 denial are moot. Either way, this Court should not reach the merits of these arguments.

#### CONCLUSION

The state respectfully requests this Court to affirm the district court’s order denying the motion to withdraw the guilty pleas and otherwise dismiss the appeal.

DATED this 20th day of July, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of July, 2018, 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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