

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 43216

STATE OF IDAHO,) 2016 Unpublished Opinion No. 378
)
Plaintiff-Respondent,) Filed: February 9, 2016
)
v.) Stephen W. Kenyon, Clerk
)
KODI DANIEL SMITH,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Appeal from order denying Idaho Criminal Rule 35 motion, dismissed.

Sara B. Thomas, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before MELANSON, Chief Judge; GRATTON, Judge;
and HUSKEY, Judge

PER CURIAM

Kodi Daniel Smith pleaded guilty to possession of controlled substance with the intent to deliver (methamphetamine/amphetamine), felony, Idaho Code § 37-2732(a)(1)(A). Smith entered into a plea agreement wherein, in part, he waived his right to file an Idaho Criminal Rule 35 motion and to appeal the sentence unless the district court imposed a determinate sentence greater than the determinate sentence recommended by the State. Pursuant to the plea agreement, the State was required to recommend a unified ten-year sentence, with three years

determinate.¹ The district court imposed a unified nine-year sentence, with one year determinate. Smith then filed an I.C.R. 35 motion, which the district court denied. Smith appeals.

Smith's determinate sentence does not exceed the State's recommended determinate sentence. As such, we hold that Smith's right to file an I.C.R. 35 motion and his appellate challenge to the excessiveness of his sentence has been waived by his plea agreement. *See* I.C.R. 11(f)(1); *State v. Rodriguez*, 142 Idaho 786, 787, 133 P.3d 1251, 1252 (Ct. App. 2006). Accordingly, we dismiss Smith's appeal.

¹ Neither the transcript of the change of plea hearing or the sentencing hearing are included in the appellate record. Additionally, the court minutes of the sentencing hearing do not detail the sentencing recommendations made by the State. Absences in the record are presumed to support the district court's decision. *State v. Murphy*, 133 Idaho 489, 494, 988 P.2d 715, 720 (Ct. App. 1999) (citations omitted). Therefore, we will presume the State's sentencing recommendations were consistent with the plea agreement.