

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 45261

|                              |                                  |
|------------------------------|----------------------------------|
| STATE OF IDAHO,              | )                                |
|                              | ) <b>Filed: June 26, 2018</b>    |
| <b>Plaintiff-Respondent,</b> | )                                |
|                              | ) <b>Karel A. Lehrman, Clerk</b> |
| v.                           | )                                |
|                              | ) <b>THIS IS AN UNPUBLISHED</b>  |
| ANTHONY JOHN BOUNDY,         | ) <b>OPINION AND SHALL NOT</b>   |
|                              | ) <b>BE CITED AS AUTHORITY</b>   |
| <b>Defendant-Appellant.</b>  | )                                |
| _____                        | )                                |

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Cheri C. Copsey, District Judge.

Appeal from judgment of conviction and unified sentence of seven years, with a minimum period of confinement of two years, for possession of a controlled substance and appeal from order denying I.C.R. 35 motion for reduction of sentence, dismissed.

Eric D. Fredericksen, State Appellate Public Defender; Lara E. Anderson, Deputy Appellate Public Defender, Boise, for appellant.

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

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Before GRATTON, Chief Judge; GUTIERREZ, Judge;  
and LORELLO, Judge

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PER CURIAM

Anthony John Boundy entered an *Alford*<sup>1</sup> plea to possession of a controlled substance. I.C. § 37-2732(c)(1). In exchange for his guilty plea, the parties entered into a biding I.C.R. 11 plea agreement in which the State agreed to recommend a seven-year sentence, with a determinate term of two years, to run consecutive to Boundy’s other sentences and to not file an

<sup>1</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

allegation that Boundy is a persistent violator. Pursuant to the plea agreement, Boundy waived his right to appeal his sentence unless the district court exceeded the State's recommendation. In accordance with the plea agreement, the district court sentenced Boundy to a unified term of seven years, with a minimum period of confinement of two years, to run consecutive to several other unrelated sentences. Boundy filed an I.C.R 35 motion requesting that the district court modify his sentence to be served concurrently with the other sentences rather than consecutively, which the district court denied. Boundy appeals, noting that he is mindful of his appeal waiver but nonetheless asserting that the district court abused its sentencing discretion.

We hold that Boundy's appellate challenge to the excessiveness of his sentence and the denial of his Rule 35 motion have 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). Boundy's plea agreement contained a clause by which Boundy waived his right to appeal his sentence. Accordingly, we dismiss Boundy's appeal.