

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46225

STATE OF IDAHO,)
Plaintiff-Respondent,) **Filed: October 25, 2019**
v.)
DARIUS WAYNE HAWS,) **Karel A. Lehrman, Clerk**
Defendant-Appellant.)
)

Appeal from the District Court of the Seventh Judicial District, State of Idaho,
Fremont County. Hon. Gregory Moeller, District Judge.

Appeals from judgments of conviction and sentences, dismissed; and orders relinquishing jurisdiction, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Kim A. Coster, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

In two separate cases, Darius Wayne Haws pleaded guilty pursuant to a plea agreement to delivery of a controlled substance, Idaho Code § 37-2732(a)(1)(A), and battery on a police officer, I.C. § 18-915(3). A term of the plea agreement required Haws to waive his right to appeal his sentence. Respectively, the district court imposed a unified six-year sentence, with two years determinate, and a unified three-year sentence, with one year determinate, with the sentences to run consecutively. The district court retained jurisdiction, and Haws was sent to participate in the rider program. Subsequently, the district court relinquished jurisdiction. Haws

appeals, claiming the district court erred by relinquishing jurisdiction. He also argues his sentences are excessive and constitute an abuse of discretion.

In his opening brief, Haws does not challenge the validity of his guilty plea or that his waiver of his appellate rights was not knowing, intelligent, and voluntary, but instead raises that issue for the first time in his reply brief. Issues not raised in the opening brief are waived for purposes of appeal. I.A.R. 35(a)(6); *State v. Hawkins*, 159 Idaho 507, 517, 363 P.3d 348, 358 (2009). Moreover, during the plea colloquy, Haws affirmed that he understood the terms of the plea agreement before he entered guilty pleas. Now, Haws contends that his sentences are excessive and constitute an abuse of discretion. We hold that Haws' appellate challenges to excessive sentences have been waived by his plea agreement. See I.C.R. 11(f)(1); *State v. Cope*, 142 Idaho 492, 495-99, 129 P.3d 1241, 1245-49 (2006); *State v. Rodriguez*, 142 Idaho 786, 787, 133 P.3d 1251, 1252 (Ct. App. 2006). Accordingly, we dismiss Haws' claims that the district court abused its discretion by imposing excessive sentences.

The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. *State v. Herrera*, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion by relinquishing jurisdiction. Therefore, the orders relinquishing jurisdiction are affirmed.