

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 46747/46826

STATE OF IDAHO, )  
 )  
 ) **Filed: December 17, 2019**  
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 ) **Karel A. Lehrman, Clerk**  
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 ) **THIS IS AN UNPUBLISHED**  
 ) **OPINION AND SHALL NOT**  
 ) **BE CITED AS AUTHORITY**  
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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Jerome and Twin Falls Counties. Hon. Eric J. Wildman, District Judge.

Judgments of conviction and concurrent, unified sentences of ten years with five-year determinate terms for aggravated assault and grand theft, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jeffrey D. Nye, Deputy Attorney General, Boise, for respondent.

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

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PER CURIAM

In consolidated cases, Thomas Buck Chaput pled guilty to aggravated assault on a law enforcement officer, Idaho Code §§ 18-901, 18-905, 18-915(1)(b) (Docket No. 46747); and grand theft, I.C. §§ 18-2401(1), 18-2407(1)(b)(9), 18-2409 (Docket No. 46826). The district court imposed concurrent, unified sentences of ten years with five years determinate.<sup>1</sup> Chaput

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<sup>1</sup> The district court originally imposed a ten-year determinate term for aggravated assault (Docket No. 46747). However, pursuant to an Idaho Criminal Rule 35 motion for reduction of sentence, the district court imposed a modified sentence of ten years with a five-year determinate term.

appeals, contending that the district court erred in failing to retain jurisdiction or in failing to further reduce his sentence in Docket No. 46747 and abused its discretion by imposing an excessive sentence in Docket No. 46826.

In response, the State argues that under the terms of Chaput's plea agreement in Docket No. 46826, he waived his right to appeal his sentence. The right to appeal is purely statutory and may be waived. *State v. Cope*, 142 Idaho 492, 496, 129 P.3d 1241, 1245 (2006). In determining whether a defendant has waived his right to appeal, we employ the same analysis as we would in determining the validity of any plea of guilty. *Id.* A waiver will be upheld if the entire record shows the waiver was made voluntarily, knowingly, and intelligently. *Id.*

Chaput's form plea agreement in Docket No. 46826 does contain a waiver of his right to appeal his sentence. During the plea hearing, however, the district court inconsistently described Chaput's plea agreement as providing that he waives "the right to appeal anything *except as to the sentence imposed.*" The prosecutor did not correct the district court's inconsistent description of the plea agreement and clarify that it contained a waiver of Chaput's right to appeal his sentence. *Cf. State v. Peterson*, 148 Idaho 593, 597, 226 P.3d 535, 539 (2010) (ruling prosecutor had affirmative duty to dispute description of agreement if it differs from prosecutor's understanding). The district court's inconsistent description of the terms of Chaput's plea agreement and the prosecutor's failure to correct that description call into question whether Chaput's waiver was voluntary, knowing and intelligent. *See Cope*, 142 Idaho at 496, 129 P.3d at 1245 (noting waiver will be upheld only if "entire record" shows waiver was voluntary, knowing, and intelligent). Accordingly, we address the merits of Chaput's appeal of his sentence in Docket No. 46826.

The primary purpose of the retained jurisdiction program is to enable the trial court to obtain additional information regarding the defendant's rehabilitative potential and suitability for probation, and probation is the ultimate objective of a defendant who is on retained jurisdiction. *State v. Chapel*, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). There can be no abuse of discretion in a trial court's refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *State v. Beebe*, 113 Idaho 977, 979, 751 P.2d 673, 675 (Ct. App. 1988); *Toohill*, 103 Idaho at 567, 650 P.2d at 709. Based

upon the information that was before the district court at the time of sentencing, we hold that the district court did not abuse its discretion when it declined to retain jurisdiction in this case.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *Toohill*, 103 Idaho at 568, 650 P.2d at 710. When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Therefore, Chaput's judgments of conviction and sentences are affirmed.