

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47154

STATE OF IDAHO,)
) Filed: April 7, 2020
Plaintiff-Respondent,)
) Karel A. Lehrman, Clerk
v.)
) THIS IS AN UNPUBLISHED
BO WILLIAM VANDENBERG,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
Defendant-Appellant.)
_____)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Benjamin J. Cluff, District Judge.

Appeal from judgment of conviction, dismissed.

Eric D. Fredericksen, State Appellate Public Defender; Jenny C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Pursuant to a plea agreement, Bo William Vandenberg pleaded guilty to possession of a controlled substance, Idaho Code § 37-2732(c)(1). As part of the plea agreement, Vandenberg waived the right to appeal any issue in the case, except he retained the right to appeal the length of his sentence if the district court “exceeds the recommendation made by the State at sentencing regarding: (1) the determinate portion of the sentence and/or (2) a probation recommendation and/or (3) a retained jurisdiction recommendation.” The State agreed to recommend a sentence of seven years, with three years determinate, and a period of retained jurisdiction and agreed to dismiss other charges.

At the sentence hearing, in compliance with the plea agreement, the State recommended a unified sentence of seven years, with a minimum period of confinement of three years, and for the court to retain jurisdiction. Vandenberg recommended that the district court impose a unified sentence of four years, with two years determinate, and that the district court impose sentence rather than to retain jurisdiction. The district court imposed a unified sentence of five years, with a minimum period of confinement of three years. Vandenberg appeals, contending that his sentence is excessive.

We hold that Vandenberg's appellate challenge to the excessiveness of his sentence has 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). The State did not recommend nor did the district court impose a sentence in excess of the terms of the plea agreement. Accordingly, we dismiss Vandenberg's appeal.