

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47644

STATE OF IDAHO, )  
 ) **Filed: August 19, 2020**  
 Plaintiff-Respondent, )  
 ) **Melanie Gagnepain, Clerk**  
 v. )  
 ) **THIS IS AN UNPUBLISHED**  
 JACK DANIEL MORTON, ) **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 and unified sentence of twelve years, with a minimum period of confinement of five years, for trafficking in methamphetamine, dismissed.

Eric D. Fredericksen, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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Before GRATTON, Judge; LORELLO, Judge;  
and BRAILSFORD, Judge  
\_\_\_\_\_

PER CURIAM

Jack Daniel Morton pled guilty to trafficking in methamphetamine. I.C. § 37-2732B(a)(4). In exchange for his guilty plea, additional charges were dismissed including an allegation that he is a persistent violator. The parties entered into an agreement in which Morton agreed to waive the right to appeal his sentence unless the district court exceeded the determinate portion of the State’s sentencing recommendation. Pursuant to that same agreement, the State agreed to limit its recommended determinate term to five years. The State complied with that agreed-upon

recommendation. The district court sentenced Morton to a unified term of twelve years, with a minimum period of confinement of five years. Morton filed an I.C.R. 35 motion, which the district court denied. Morton appeals, noting he is mindful of his appeal waiver but nonetheless asserting the district court abused its sentencing discretion.

We hold that Morton'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. Rodriguez*, 142 Idaho 786, 787, 133 P.3d 1251, 1252 (Ct. App. 2006). Morton's plea agreement contained a clause by which Morton waived his right to appeal his sentence if the district court did not exceed the determinate term recommended by the State. The district court did not exceed that recommended term. Accordingly, we dismiss Morton's appeal.