

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47747

STATE OF IDAHO,	)
	) <b>Filed: September 15, 2020</b>
<b>Plaintiff-Respondent,</b>	)
	) <b>Melanie Gagnepain, Clerk</b>
v.	)
	) <b>THIS IS AN UNPUBLISHED</b>
<b>KENNETH DWAYNE SARTIN, JR.,</b>	) <b>OPINION AND SHALL NOT</b>
	) <b>BE CITED AS AUTHORITY</b>
<b>Defendant-Appellant.</b>	)
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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Benjamin J. Cluff, District Judge.

Appeal from order denying I.C.R. 35 motion for reduction of sentence, dismissed.

Eric D. Fredericksen, State Appellate Public Defender; Erik Lehtinen, 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 HUSKEY, Chief Judge; LORELLO, Judge;  
and BRAILSFORD, Judge

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PER CURIAM

Kenneth Dwayne Sartin, Jr. pled guilty to aggravated assault, I.C. § 18-905(a), with a deadly weapon enhancement, I.C. § 19-2520, and to two counts of misdemeanor injury to a child, I.C. § 18-1501(2). The parties entered into a plea agreement. Pursuant to the agreement and in exchange for Sartin’s guilty plea, the State dismissed additional charges and agreed not to file charges related to no-contact order violations. In addition, Sartin waived his right to appeal his sentence unless the court exceeded the determinate term recommended by the State, and waived his right to file an I.C.R. 35 motion except as to an illegal sentence. Consistent with the State’s sentencing recommendation, the district court sentenced Sartin to a unified term of eight years,

with a minimum period of confinement of four years, for aggravated assault with the weapon enhancement. The district court also imposed concurrent six-month terms for both misdemeanor charges. Sartin filed an I.C.R. 35 motion, which the district court denied. Sartin appeals, arguing that, although he is mindful of his appellate waiver and the absence of any new evidence in support of his Rule 35 motion, the district court nevertheless erred in denying his Rule 35 motion.

We hold that Sartin's appellate challenge to the denial of his Rule 35 motion has been waived by his plea agreement. *See State v. Rodriguez*, 142 Idaho 786, 787, 133 P.3d 1251, 1252 (Ct. App. 2006). As noted, Sartin's plea agreement contained a clause by which Sartin waived his right to appeal his sentence and his right to file a Rule 35 motion except as to an illegal sentence. Sartin does not challenge the validity of that waiver or claim that his sentence is illegal. Accordingly, we dismiss Sartin's appeal.