

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37871

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 509
	)	
Plaintiff-Respondent,	)	Filed: June 6, 2011
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JOSE NICHOLAS HUERTA,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Jonathan P. Brody, District Judge.

Appeal from judgment of conviction and unified sentence of fifteen years, with a minimum period of confinement of three years, for second degree kidnapping, dismissed.

Michael J. Wood, Twin Falls, for appellant.

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

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Before GRATTON, Chief Judge, LANSING, Judge  
and GUTIERREZ, Judge

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PER CURIAM

Jose Nicholas Huerta pleaded guilty to second degree kidnapping, Idaho Code §§ 18-4501, 18-4503, and three other charges were dismissed. As a term of the plea agreement, the State agreed to recommend a unified sentence of fifteen years with five years determinate, and that the State would recommend probation if a psychosexual evaluator found Huerta to be a low risk to reoffend, a rider if the evaluator found him to be a medium risk, and execution of his sentence if Huerta was found to be a high risk. Also as a term of the plea agreement, Huerta waived his right to appeal, “including all matters involving the plea or the sentencing” unless the sentence imposed by the court exceeded the State’s recommendation of five to fifteen years. Huerta was determined to be a moderate risk to reoffend and, consistent with the plea agreement,

the State recommended a unified sentence of fifteen years with five years determinate, with the court retaining jurisdiction. The district court imposed a unified sentence of fifteen years with three years determinate and did not retain jurisdiction. Huerta appeals, contending that his sentence is excessive. He argues that the court should have retained jurisdiction or placed him on probation.

The State argues that this appeal should be dismissed because Huerta waived the right to appeal his sentence. We agree. A waiver of the right to appeal a sentence, as a component of a plea agreement, is valid and enforceable if it was made voluntarily, knowingly, and intelligently. *State v. Murphy*, 125 Idaho 456, 872 P.2d 719 (1994). *See also* Idaho Criminal Rule 11(d)(3). Here, Huerta waived the right to challenge his sentence on appeal as long as the sentence imposed by the district court did not exceed the State's recommendation of a unified term of fifteen years with five years determinate. The court imposed a lesser unified sentence of fifteen years with three years determinate. The district court did not retain jurisdiction as recommended by the State, but there is no provision in the plea agreement allowing Huerta to appeal in the event that the court did not follow the State's recommendation for retained jurisdiction. Huerta does not challenge the validity of the waiver provision in the plea agreement nor contend that the State in any way violated the plea agreement, nor does he maintain that the plea agreement was not voluntary, knowing, and intelligent. Therefore, this Court will enforce the waiver.

Accordingly, this appeal is dismissed.