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IN THE  
COURT OF APPEALS OF INDIANA

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Jonathan Matthew Nolan,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

October 27, 2021

Court of Appeals Case No.  
21A-CR-305

Appeal from the Hamilton  
Superior Court

The Honorable Jonathan M.  
Brown, Judge

Trial Court Cause No.  
29D02-1907-F5-6257

**Pyle, Judge.**

## Statement of the Case

[1] Jonathan Nolan (“Nolan”) appeals the restitution order imposed following his plea of guilty to domestic battery, a Level 6 felony.<sup>1</sup> Nolan argues that: (1) the trial court abused its discretion when it ordered him to pay restitution to his domestic battery victim for her lost wages; and (2) the trial court erred when it failed to inquire into his ability to pay restitution. However, the State argues that Nolan has waived his right to appeal the restitution order because he signed a plea agreement leaving all terms of his sentence to the trial court’s discretion. Concluding that Nolan has waived his right to appeal the restitution order due to the terms of his plea agreement, we affirm the trial court’s order.

[2] We affirm.

## Issue

Whether Nolan waived his right to appeal a restitution order after signing a plea agreement leaving all terms of his sentence to the trial court’s discretion.

## Facts

[3] In July 2019, Nolan and his pregnant wife, J.N. (“J.N.”), were discussing their separation. This discussion led into an argument. During this argument, J.N. took Nolan’s phone, and Nolan responded by pulling J.N. off of a couch and grabbing J.N. by both of her wrists. Nolan twisted J.N.’s wrists with enough

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<sup>1</sup> IND. CODE § 35-42-2-1.3(a)(1).

force for his nails to draw blood from J.N.'s forearms. During the struggle, Nolan also inadvertently struck H.N., the four-year-old child of Nolan and J.N., on the nose.

[4] In July 2019, the State charged Nolan with Level 5 felony domestic battery resulting in bodily injury to a pregnant woman and Level 6 felony domestic battery. In December 2020, Nolan pleaded guilty, pursuant to a plea agreement, to Level 6 felony domestic battery. In exchange, the State dismissed the Level 5 felony domestic battery charge. The plea agreement stated “[t]otal sentence: All terms shall be open to the court.” (App. Vol. 2 at 15) (emphasis removed). The plea agreement also provided that Nolan “hereby waives his right to appeal any discretionary portion of the sentence entered pursuant to and in accordance with this plea agreement and further acknowledges and affirms that this waiver is knowing and made voluntarily.” (App. Vol. 2 at 17). Finally, the plea agreement provided that “[t]he defendant hereby waives his right to appeal the sentence so long as the Court sentences him within the terms of the plea agreement.” (App. Vol. 2 at 17). The trial court accepted Nolan’s guilty plea in December of 2020.

[5] In January 2021, the trial court held a sentencing hearing. The trial court sentenced Nolan to two (2) years, with one (1) year executed in Hamilton County Community Corrections and one (1) year suspended to probation. The trial court also ordered Nolan to pay restitution to J.N. in the amount of \$10,680. As terms of Nolan’s probation, the trial court further ordered Nolan

to complete a batterer’s intervention course, complete his probation commitment, and pay all costs, fines, and fees.

[6] Nolan now appeals.

## Decision

[7] Nolan argues that the trial court abused its discretion when it ordered Nolan to pay restitution to the victim of his domestic battery. Nolan also argues that the trial court erred when it did not inquire into his ability to pay restitution. However, the State argues that Nolan “waived the right to challenge the amount of restitution imposed[.]” (State’s Br. 8). The State contends that Nolan waived his right to appeal the restitution because of the terms of his plea agreement. We agree with the State.<sup>2</sup>

[8] “Plea agreements are contracts and once a trial court accepts it, a plea agreement and its terms are binding upon the trial court, the State and the defendant.” *Archer v. State*, 81 N.E.3d 212, 215-16 (Ind. 2017). Because a plea agreement is a contract, the principles of contract law can provide guidance when considering plea agreements. *Griffin v. State*, 756 N.E.2d 572, 574 (Ind. Ct. App. 2001), *reh’g denied, trans. denied*. A defendant may waive his or her

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<sup>2</sup> We note that the motions panel denied the State’s motion to dismiss this case. However, we are not bound by the motions panel’s decision. See *Cincinnati Ins. Co. v. Young*, 852 N.E.2d 8, 12 (Ind. Ct. App. 2006), *trans. denied*.

right to appeal a sentence as part of a plea agreement and such waivers are valid and enforceable. *Creech v. State*, 887 N.E.2d 73, 74-75 (Ind. 2008).

[9] INDIANA CODE § 35-50-5-3 provides that “the court may . . . order the person to make restitution to the victim of the crime, the victim’s estate, or the family of a victim who is deceased.” A restitution order is within the trial court’s discretion, and we will reverse only upon a showing of an abuse of discretion. *J.H. v. State*, 950 N.E.2d 731, 734 (Ind. Ct. App. 2011). An order of restitution is as much a part of a criminal sentence as a fine or other penalty. *Kotsopoulos v. State*, 654 N.E.2d 44, 46 (Ind. Ct. App. 1995), *reh’g denied, trans. denied*.

[10] Our review of the record shows us that Nolan clearly waived his right to appeal the restitution order. Specifically, the plea agreement provided “[t]otal sentence: All terms shall be open to the court.” (App. Vol. 2 at 15). The plea agreement also provided that Nolan “hereby waives his right to appeal any discretionary portion of the sentence entered pursuant to and in accordance with this plea agreement and further acknowledges and affirms that this waiver is knowing and made voluntarily.” (App. Vol. 2 at 17). Finally, the plea agreement provided that “[t]he defendant hereby waives his right to appeal the sentence so long as the Court sentences him within the terms of the plea agreement.” (App. Vol. 2 at 17).

[11] Nolan agreed to waive his right to appeal any discretionary portions of his sentence in his plea agreement and thereby waived his right to appeal the restitution as ordered by the trial court. *See Creech*, 887 N.E.2d at 75. We

decline to address Nolan's arguments on appeal due to his waiver of his right to appeal his restitution order.

[12] Nolan's plea agreement left all terms of his sentence to the trial court's discretion and Nolan waived his right to appeal any discretionary portion of his sentence in his plea agreement. Restitution is at the discretion of the trial court, thus, we affirm the trial court's restitution order.

[13] Affirmed.

Bailey, J., and Crone, J., concur.