

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brandon Key Brown,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 17, 2021

Court of Appeals Case No.
20A-CR-1546

Appeal from the Vanderburgh
Superior Court

The Honorable Robert J. Pigman,
Judge

Trial Court Cause No.
82D03-1906-MR-4366

Altice, Judge.

Case Summary

- [1] Following his guilty plea to murder, a felony, and his admission to being a habitual offender, Brandon Brown appeals his sentence of sixty-five years, which was the maximum permitted under the plea agreement. Brown contends that the sentence imposed by the trial court was inappropriate in light of the nature of the offense and his character. The State cross-appeals arguing that Brown waived his right to appeal his sentence by the terms of his plea agreement.
- [2] We affirm.

Facts & Procedural History

- [3] On June 21, 2019, Evansville Police Department officers were dispatched to a home following a 911 call reporting that Corey Hughes was lying on the kitchen floor in a pool of blood. Officers found the front door open and discovered Hughes as described. Hughes was transported to a hospital but died. An autopsy revealed that Hughes had been shot once in the head.
- [4] After receiving information that Brown may have been involved in Hughes's murder, officers spoke to Brown, who eventually admitted that he called Hughes that morning, went to Hughes's residence, and brought a handgun with him. Brown told the officers that Hughes opened the door and let him inside, and then Hughes swung a knife at him. Brown told the officers that, at that point, he "blacked out and heard a bang" and the next thing he remembered, he was driving down the road and "realized what had occurred." *Appellant's*

Appendix at 76. Brown further admitted that he had purchased the handgun “off the street.” *Id.*

- [5] On June 25, 2019, the State charged Brown with murder and Level 4 felony unlawful possession of a firearm by a serious violent felon and alleged that Brown was a habitual offender. The State later filed a sentencing enhancement for committing a felony offense while armed with a firearm. On June 8, 2020, Brown entered into a plea agreement with the State in which he pled guilty to murder and admitted he was a habitual offender. In exchange, the State agreed to dismiss the Level 4 felony firearm charge and the felony firearm enhancement. Sentencing was left open for the court to determine but capped at sixty-five years. The plea agreement also provided, in part:

The Defendant hereby waives the right to appeal any sentence imposed by the Court, under any standard of review, including, but not limited to, an abuse of discretion standard and the appropriateness of the sentence under Rule 7 of the Indiana Rules of Appellate Procedure, so long as the Court sentences the Defendant within the terms of this Plea Agreement.

Id. at 101.

- [6] That same day, the court held a combined guilty plea and sentencing hearing. Brown indicated that he had read the plea agreement and understood its terms. The trial court advised Brown of the rights that he would be entitled to if there was a trial, including the right to appeal a conviction, and Brown stated that he understood that by pleading guilty he was giving up those rights. The court reviewed with Brown the sentencing range for each of the charges. The State

presented testimony from Hughes's family and friends, and counsel for each party presented argument as to sentencing. Thereafter, Brown gave a statement, in which he said that he accepted full responsibility for his actions, apologized, and asked the trial court to impose "the max" allowed under the plea agreement. *Transcript* at 30.

- [7] The court then accepted the plea agreement and sentenced Brown to fifty-five years in the Indiana Department of Correction for his murder conviction and enhanced that sentence by ten years for the habitual offender adjudication.

After imposing the sentence, the court advised Brown:

You have a right under Indiana law to appeal the court's determination that the maximum sentence under the agreement was appropriate um you cannot appeal obviously your conviction since you plead [sic] guilty, but you could appeal that judgment that the court has entered today. You must do so by filing either a Motion to Correct Errors or a Notice of Appeal within thirty (30) days of today's date. . . . So you would have the services of the Public Defender's Office available to help you effectuate that appeal. I will appoint the Public Defender for that purpose um but you can also way [sic] that right. You seem to have accepted the fact that this is an appropriate sentence so um I'll let you talk to the Public Defender about that.

Id. at 31-32. Neither party voiced an objection to the court's statement concerning a right to appeal.

- [8] On July 22, 2020, the trial court granted Brown's Post-Conviction Rule 2(1) petition to file a belated notice of appeal, and this appeal ensued.

Discussion & Decision

- [9] Brown asserts that his sentence is inappropriate in light of the offense and his character. The State cross-appeals, arguing that, pursuant to his plea agreement, Brown knowingly waived his right to challenge his sentence. We find the State's argument dispositive of this appeal.
- [10] In *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008), our Indiana Supreme Court held that "a defendant may waive the right to appellate review of his sentence as part of a written plea agreement." Brown acknowledges that he signed a plea agreement in which he waived his right to appeal his sentence but contends that such waiver is void because, at the hearing, the trial court "expressly informed" him that he had the right to appeal. *Appellant's Brief* at 9. Brown argues that this advisement contradicted the plea agreement and that, under such circumstances, this court has determined that a defendant did not waive his right to appeal his sentence. In that regard, he refers us to *Ricci v. State*, 894 N.E.2d 1089 (Ind. Ct. App. 2008), *trans. denied* and *Bonilla v. State*, 907 N.E.2d 586, 589 (Ind. Ct. App. 2009), *trans. denied*.
- [11] The State maintains that *Ricci* and *Bonilla* are inapposite because, in those cases, the trial court's statements concerning the defendant's right to appeal were made during the *plea* hearing and caused confusion about whether the defendant retained the right to appeal, whereas in the present case, the court's erroneous statement occurred during the *sentencing* phase of the hearing. The State urges that Brown's situation is more akin to that of the defendant in

Creech, where the Court held that a trial court's incorrect advisement at the conclusion of a sentencing hearing had no effect on an otherwise knowing, intelligent, and voluntary waiver of the right to appeal a sentence. The *Creech* Court explained, "by the time the trial court erroneously advised Creech of the possibility of appeal, Creech had already pled guilty and received the benefit of his bargain," and "being told at the close of the hearing that he could appeal presumably had no effect on that transaction." *Creech*, 887 N.E.2d at 77.

[12] Here, as in *Creech*, the trial court's erroneous statement to Brown concerning a right to appeal his sentence was made at the conclusion of the sentencing hearing, after the court had accepted the plea agreement and imposed a sentence. Accordingly, we conclude that the trial court's misstatement to Brown concerning a right to appeal his sentence had no effect on Brown's prior waiver of that right in his written plea agreement. *See id.*; *see also Starcher v. State*, 66 N.E.3d 621, 623 (Ind. Ct. App. 2016) (defendant's waiver in plea agreement remained valid where court's misstatement occurred at end of sentencing hearing and defendant had already received benefit of bargain), *trans. denied*; *Akens v. State*, 929 N.E.2d 265, 267 (Ind. Ct. App. 2010) (same); *Ricci*, 894 N.E.2d at 1093 ("[U]nder *Creech*, a trial court's incorrect advisement at the conclusion of a defendant's sentencing hearing has no effect on an otherwise knowing, voluntary, and intelligent waiver of the right to appeal his sentence."), *trans. denied*. Brown has thus waived his appropriateness challenge to his sentence.

[13] Judgment affirmed.

Mathias, J. and Weissmann, J., concur.