

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Rebecca L. Roberts,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*



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March 18, 2024

Court of Appeals Case No.  
23A-CR-1787

Appeal from the  
Bartholomew Circuit Court

The Honorable  
Kelly S. Benjamin, Judge

Trial Court Cause Nos.  
03C01-2010-F6-4956  
03C01-2303-F6-1422

**Memorandum Decision by Senior Judge Robb**  
Judges Vaidik and Crone concur.

**Robb, Senior Judge.**

## Case Summary and Issue

- [1] Rebecca Roberts appeals the sentence imposed on her Level 6 felony convictions of possession of methamphetamine and unlawful possession of a syringe, contending it is inappropriate. Concluding that the terms of Roberts' plea agreement demonstrate she waived her right to appellate review of her sentence, we dismiss her appeal.

## Facts and Procedural History

- [2] Pursuant to a written plea agreement, Roberts pleaded guilty to possession of methamphetamine and unlawful possession of a syringe in one cause and admitted to violating her probation in a second cause. In exchange, the State agreed not to file an habitual offender enhancement and dismissed all charges under a third cause number. The agreement also provided that Roberts waived her right to appeal the convictions and sentence by direct appeal so long as the court sentenced her within the terms of the agreement. The trial court sentenced her to concurrent terms of 912 days for the felony convictions and to time served for the probation violation. At the plea hearing and at sentencing, the court mistakenly told Roberts she had the right to appeal her sentence. Roberts now appeals.

## Discussion and Decision

[3] Roberts challenges the inappropriateness of her sentence for her felony convictions, but we need not reach that issue because she waived her right to a direct appeal. A plea agreement is a contract and once the trial court accepts it, the agreement and its terms are binding upon the court, the State, and the defendant. *Archer v. State*, 81 N.E.3d 212, 215-16 (Ind. 2017). As part of a plea agreement, a defendant may waive his or her right to appeal a sentence, and such waivers are valid and enforceable. *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008).

[4] Roberts' plea agreement provided that the sentence for each felony count would be concurrent to the other with the length of the sentence left to the court's discretion. *See* Appellant's App. Vol. 2, p. 50 (Plea Agrmt, ¶ 5). As part of the plea agreement, Roberts acknowledged by initialing the provision that stated:

By entering into this plea agreement I hereby waive any right to appeal the conviction and/or sentence in this cause by direct appeal so long as the Judge sentences me within the terms of my plea agreement.

*Id.* at 49 (Plea Agrmt, ¶ 16). At the plea hearing, the court misinformed Roberts, stating that by pleading guilty she would give up her right to appeal the convictions but that she could still appeal her sentence. Tr. Vol. 2, p. 7. At sentencing, the court incorrectly advised Roberts:

You do have a right to appeal this decision. If you want to appeal, you have 30 days from today's date to file a Notice of

Appeal or a Motion to Correct Error. If you do not, you waive that right. If you file a Motion to Correct Error and it's denied, you have 30 days from that date to file a notice of appeal; if you do not, you waive that right.

*Id.* at 52.

[5] Roberts waived her right to appeal her sentence through the unambiguous terms of her written plea agreement, and the trial court sentenced her within the terms of that agreement. Thus, her sentencing appeal waiver is valid. She does not claim that the waiver was unclear, that she misunderstood the terms of the agreement at the time she signed it, or that her consent to the agreement was involuntary.

[6] Moreover, the trial court's erroneous advisements do not nullify Roberts' waiver of her right to appeal. Rather, if she was misled by the trial court's statement, her only remedy is to pursue post-conviction relief. *See Davis v. State*, 217 N.E.3d 1229 (Ind. 2023) (holding that if trial court's misstatement about defendant's appeal rights misled defendant, remedy is to seek vacation of conviction through postconviction relief proceedings), *as modified* (Oct. 3, 2023).

## Conclusion

[7] Based on the foregoing, we conclude Roberts entered into a written plea agreement with an explicit provision waiving her right to appellate review of her sentence. Roberts has thus waived her right to appeal her sentence directly, and therefore this appeal is dismissed.

Dismissed.

Vaidik, J., and Crone, J., concur.

ATTORNEY FOR APPELLANT

Miriam Huck  
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Sierra A. Murray  
Nicole D. Wiggins  
Deputy Attorneys General  
Indianapolis, Indiana