

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Middaugh,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 23, 2021

Court of Appeals Case No.
20A-CR-1777

Appeal from the Elkhart Superior
Court

The Honorable Teresa L. Cataldo,
Judge

Trial Court Cause Nos. 20D03-
2003-F2-5 & 20D03-0509-FA-146

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Michael Middaugh (Middaugh), appeals his sentence following his guilty plea to burglary, a Level 2 felony, Ind. Code § 35-43-2-1(3)(A); criminal confinement, a Level 3 felony, I.C. §§ 35-42-3-3(a), (b)(3)(A); attempted sexual battery, a Level 4 felony, I.C. §§ 35-42-4-8(a)(1)(A), (b)(1), and 35-41-5-1; and his enhancement for being an habitual offender, I.C. § 35-50-2-8.
- [2] We reverse and remand for resentencing.

ISSUE

- [3] Middaugh presents us with several issues, but we find an issue raised by the State to be dispositive: Whether the trial court abused its discretion when it imposed an executed sentence in excess of that allowed by the terms of Middaugh's plea agreement.

FACTS AND PROCEDURAL HISTORY

- [4] On March 29, 2019, Middaugh began his probation for a 2006 child molesting conviction. On July 18, 2019, around 7:30 a.m., Middaugh forced his way into the home of an eighty-one-year-old woman (Victim) after knocking on her door and asking for directions. Middaugh threatened Victim with a knife, demanded money, and bound her hands with a plastic zip-tie. Victim provided Middaugh with some cash, but he demanded more. Middaugh followed Victim into her bedroom, partially exposed the lower half of her body, forced her to lie face-down on her bed, and pressed his genitals against her. Middaugh threatened to

rape Victim if she did not give him more cash. After Victim convinced Middaugh that she had no additional money, he unbound her hands and fled. Middaugh's DNA was subsequently found on the zip-tie he had used to bind Victim, and Victim identified his voice from an array of vocal exemplars.

[5] On March 20, 2020, the State filed an Information, charging Middaugh with Level 2 felony burglary, Level 3 felony criminal confinement, and Level 4 felony attempted sexual battery. In a separate Information, the State alleged that Middaugh was an habitual offender due to having two prior unrelated felony convictions for Class A felony rape and Class A felony child molesting. On August 4, 2020, Middaugh entered into a plea agreement with the State whereby he agreed to plead guilty as charged in exchange for a thirty-year cap "on any originally-imposed executed sentence[.]" (Appellant's App. Vol. II, p. 42). All other terms of the sentence and probation, if any, were to be left to the trial court's discretion.

[6] On August 13, 2020, Middaugh pleaded guilty subject to his plea agreement, and the trial court took his plea under advisement. On September 10, 2020, the trial court formally accepted Middaugh's guilty plea and proceeded to sentencing. The trial court found as aggravating circumstances that Middaugh had a significant criminal record dating from 1983 consisting of five juvenile adjudications, two misdemeanors, and six felony convictions; Middaugh had a history of substance abuse and had last used heroin and marijuana on the day he was arrested for the instant offenses; Middaugh was on probation at the time he committed the offenses; and the facts and circumstances of the offenses. The

trial court found Middaugh's plea to be a mitigating circumstance but noted that its terms were very favorable.

[7] The trial court sentenced Middaugh to thirty years executed for his Level 2 felony burglary conviction, which the trial court enhanced by twenty years for being an habitual offender. For the Level 3 felony criminal confinement conviction, the trial court sentenced Middaugh to sixteen years, entirely suspended, but with a "li[f]e term of reporting probation." (Transcript p. 39). The trial court imposed a twelve-year sentence for the attempted sexual battery conviction, which it also initially suspended entirely to a "li[f]e term of reporting probation." (Tr. p. 39). Later in the hearing, the trial court clarified that it was imposing ten years of reporting probation on the attempted sexual battery conviction. The trial court ordered Middaugh to serve all his sentences consecutively, "including the habitual." (Tr. p. 43). The trial court then clarified that it was suspending the habitual offender enhancement to probation because "that was the 30-year executed cap in the agreement[,] so I did not want to violate the agreement." (Tr. p. 44).

[8] On September 11, 2020, the trial court issued its written sentencing order in which it found as additional aggravating circumstances that Middaugh had a pending rape charge in Marshall County by the time of sentencing and that Middaugh had not availed himself of opportunities for treatment. The trial court again recognized Middaugh's guilty plea as a mitigating circumstance, found that it did not "outweigh even one of the aggravating circumstances," and concluded that an aggravated sentence was appropriate. (Appellant's App.

Vol. II, p. 33). The trial court ordered that Middaugh would serve all his sentences consecutively, including his habitual offender enhancement. The trial court also imposed restitution, fines, costs, fees, and other requirements that are not at issue.

[9] Middaugh now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[10] Our supreme court has long held that a trial court's sentencing decisions are reviewed under an abuse of discretion standard. *McCain v. State*, 148 N.E.3d 977, 981 (Ind. 2020). An abuse of the trial court's discretion occurs if its decision is clearly against the logic and effect of the facts and circumstances before the court, or the "reasonable, probable, and actual deductions to be drawn therefrom." *Id.*

II. *Analysis*

[11] Middaugh makes a number of appellate claims, including that the trial court should have ordered him to serve his sentences for burglary and criminal confinement concurrently, the trial court made no explicit finding supporting its imposition of consecutive sentences, and the trial court impermissibly imposed a consecutive habitual offender enhancement. The State acknowledges that the trial court erroneously sentenced Middaugh in a manner that violated the terms of his plea agreement and requests that we remand for resentencing. We agree with the State.

[12] Plea agreements are contractual in nature. *Lee v. State*, 816 N.E.2d 35, 38 (Ind. 2004). Although a trial court enjoys considerable discretion in determining whether to accept a proposed plea agreement, once it does accept the agreement, the court is bound by its terms. *Rodriguez v. State*, 129 N.E.3d 789, 794 (Ind. 2019). Put another way, once a trial court accepts a plea agreement, it is “precluded from imposing any sentence other than [that] required by the plea agreement.” *Bennett v. State*, 802 N.E.2d 919, 922 (Ind. 2004).

[13] Here, Middaugh’s plea agreement provided for a thirty-year cap “on any originally-imposed executed sentence[.]” (Appellant’s App. Vol. II, p. 42). The trial court imposed a thirty-year sentence for Middaugh’s Level 2 felony burglary conviction and enhanced that sentence by twenty years for being an habitual offender. This fifty-year sentence was in contradiction to the express terms of Middaugh’s plea agreement. The fact that the trial court stated at Middaugh’s sentencing hearing that it was suspending the habitual offender enhancement did not alleviate the error because an habitual offender enhancement cannot be suspended. *See* I.C. § 35-50-2-8(i) (An “additional term imposed under this subsection is nonsuspendible.”). In any event, in its written sentencing order, the trial court did not suspend the habitual offender enhancement.

[14] We remand so that the trial court may resentence Middaugh within the thirty-year cap on the originally-executed portion of his sentence, as provided for in his plea agreement. *See Jackson v. State*, 968 N.E.2d 328, 334 (Ind. Ct. App. 2012) (remanding for resentencing where the trial court had imposed a sentence

in excess of that called for in defendant's plea agreement). Upon remanding, we note the following sentencing principles. "Habitual offender is a status that results in an enhanced sentence. It is not a separate crime and does not result in a consecutive sentence." I.C. § 35-50-2-8(j). The habitual offender enhancement must be attached to the felony conviction with the highest sentence imposed. *See* I.C. § 35-50-2-8(j). In addition, a sentence for a Level 3 felony is nonsuspendible in excess of the statutory minimum if the defendant has any prior unrelated felony conviction. *See* I.C. § 35-50-2-2.2(b)(2). Lastly, we are aware of no authority permitting a trial court to place a defendant on probation for a lifetime as part of a sentence for a Level 3 felony criminal confinement. Given our disposition, we need not address Middaugh's specific appellate arguments.

CONCLUSION

[15] Based on the foregoing, we hold that the trial court erred when it sentenced Middaugh outside of the express terms of his plea agreement.

[16] Reversed and remanded for resentencing consistent with this opinion.

[17] Mathias, J. and Crone, J. concur