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IN THE COURT OF APPEALS OF INDIANA

Corey Desean Coleman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 11, 2021

Court of Appeals Case No. 20A-CR-817

Appeal from the Marion Superior Court

The Honorable Barbara Crawford, Judge

The Honorable Amy J. Barbar, Magistrate

Trial Court Cause No. 49G01-1905-F5-18669

Darden, Senior Judge.

Statement of the Case

[1] Corey Coleman pleaded guilty to strangulation as a Level 6 felony[1] and was sentenced to two years suspended to probation with the condition that he attend and complete classes in anger management or conflict resolution. He appeals his sentence. We affirm.

Issue

[2] The sole issue Coleman raises for review, restated, is whether the trial court abused its discretion by ordering Coleman to participate in anger management or conflict resolution classes as a condition of probation where the plea agreement made no mention of such conditions of probation.

Facts and Procedural History

[3] The matter stems from a domestic violence incident that occurred on May 4, 2019, that began when Coleman went to his ex-girlfriend E.M.'s residence. Coleman is the father of E.M.'s two children. Coleman and E.M. began to argue, and Coleman became upset and grabbed E.M. The two ended up in the front yard of the residence where Coleman again grabbed E.M., this time by her shirt, and scratched her chest. He punched E.M. several times, knocked her to the ground, and placed his hands around her throat—impeding her ability to breathe or talk. E.M. managed to escape from Coleman and call the police.

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[1] Ind. Code § 35-42-2-9(c)(2) (2017).

The police arrived on the scene around 4:30 a.m. E.M. went to the hospital for treatment.

[4] The State charged Coleman with Level 6 felony strangulation, Level 5 felony domestic battery, and Level 6 felony kidnapping. On March 10, 2020, Coleman agreed to plead guilty to Level 6 felony strangulation in exchange for the dismissal of the remaining charges. The plea agreement – which called for a fixed sentence of two years suspended to probation – reads in relevant part as follows:

> The parties agree as follows:
> ***
> 3. The Defendant agrees to plead guilty to the following charge(s):
>
> Count I: Strangulation/ F6
>
> 4. At the time of sentencing, the State will dismiss:
>
> ALL REMAINING COUNTS
>
> ***
> 6. The State of Indiana and the Defendant agree that the Court shall impose the following sentence:
>
> Count II: 2 year sentence, 2 year[s] suspended to probation.
>
> A. Throughout Defendant's entire sentence, Defendant shall have no contact of any kind with the following person(s):
>
> [E.M.] . . . .
>
> B. The following special conditions shall be imposed as a condition of any lesser restrictive executed sentence or probation, if applicable:

[LEFT BLANK]

> C. Defendant's conviction in Cause No. 49G01-1905-F5-018669 constitutes a conviction for a "crime of domestic violence" as defined in I.C. 35-31.5-2-78, and shall result in the Court issuing a Domestic Violence determination pursuant to I.C. 35-38-1-7.7.
>
> D. Defendant shall pay the $50.00 Domestic Violence Countermeasure Fee[.]
>
> ***
>
> 17. This agreement embodies the entire agreement between the parties and no promises or inducements have been made or given to the Defendant by the State which is not part of this written agreement.

Appellant's App. Vol. II, pp. 91-92.

[5] On March 11, 2020, a combined guilty plea and sentencing hearing was held, during which Coleman pleaded guilty to Level 6 felony strangulation. Prior to the presentation of the factual basis for the plea agreement, the trial court informed Coleman as follows:

> THE COURT: Do you understand that the Court is not a party to this agreement? I have not accepted or rejected your plea. If I accept it, I'm bound by its terms and I have to sentence you according to its terms. If I reject it, then you'll be allowed to withdraw your plea of guilty, re-enter a plea of not guilty and then you go to trial as if there had never been a plea. Do you understand that?

Tr. Vol. II, p. 6. Coleman indicated that he understood. The Court then proceeded to confirm that Coleman was pleading guilty freely and voluntarily,

was satisfied with the services of his attorney, and understood the constitutional rights he was relinquishing. Coleman answered in the affirmative, and the factual basis was presented. The trial court addressed Coleman's history of domestic violence, later noting that Coleman had at least five arrests related to domestic violence, and the following colloquy occurred on the record with the prosecuting attorney:

> THE COURT: Okay, now State, you know my first question, don't you?
>
> [PROSECUTOR]: Yes.
>
> THE COURT: He's got quite a history of domestic violence arrests.
>
> [PROSECUTOR]: Yes, Your Honor, he does and there were some issues that were brought to my attention by [Defense Counsel] yesterday, that caused the change in the plea offer. I have spoken with Ms. [E.M.] about that and she is not necessarily pleased, but we met in person and I discussed the reasoning for that. She understands the issues that we had.

Id. at 7-8.

[6] Thereafter, Coleman pleaded guilty to Level 6 felony strangulation, and the trial court accepted Coleman's guilty plea. The trial court then conducted the sentencing hearing and sentenced Coleman as follows:

> THE COURT: All right, Mr. Coleman, the Court has accepted your plea agreement. I'll sentence you according to the plea agreement to a period of two years in the Marion County Jail. I'll suspend that sentence and place you on probation for two years. Throughout your sentence, you are to have no contact of any kind with E.M. . . . *The Court is also going to order that you*

> *participate in conflict resolution or anger management classes.* Your criminal history certainly supports at least that. The Court will assess the fifty dollar domestic violence counter measure fee.

Id. at 13 (emphasis added). Coleman objected to the trial court's order that he attend classes, specifically:

> [DEFENSE COUNSEL]: . . . I would like to put an objection on the record to the domestic violence counseling classes.
>
> THE COURT: I didn't order domestic violence counseling. That's far more egregious. I ordered anger management or conflict resolution, which is certainly within the Court's purview for a condition of probation.
>
> [DEFENSE COUNSEL]: Okay.
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: I would just like to put an objection on the record to that being beyond the terms that were negotiated with the State and agreed to by Mr. Coleman.
>
> THE COURT: Well, that will be overruled. The Court has discretion as to what conditions of probation to impose.
>
> [DEFENSE COUNSEL]: Okay.
>
> THE COURT: Okay, he's got about five domestic violence arrests and I don't want to see him back here for that again. That's all.

Id. at 15. Coleman did not move to withdraw his guilty plea. Coleman now appeals.

Discussion and Decision

I. Motion to Strike

[7] Initially, we must address Coleman's motion to strike that he filed with this Court. The State included in its appellee's brief citations to the probable cause affidavit. Coleman seeks to strike the portion of the State's brief that cites to information contained in the affidavit—specifically, the first paragraph of the State's Statement of Facts section. In support of his motion to strike, Coleman directs our attention to the fact that the probable cause affidavit was not admitted as evidence during Coleman's combined guilty plea and sentencing hearing and that, during the presentation of the factual basis for his plea, the State did not ask Coleman whether he agreed with the assertions therein. Also, Coleman's plea agreement does not include an acknowledgement of the truth of the probable cause affidavit.

[8] According to Coleman, because the probable cause affidavit was not admitted as evidence in this case, it cannot be considered as evidence on appeal. Specifically, Coleman argues that the State's citation to the probable cause affidavit hinders appellate review of the issue he raises on appeal because it, in essence, asserts that hearsay contained in the probable cause affidavit is fact and asks this Court to improperly rely on this information to evaluate Coleman's argument. We disagree.

[9] Regarding hearsay, the strict rules of evidence do not apply to sentencing hearings. It is well-settled that hearsay evidence is admissible at a sentencing

hearing. *Dillon v. State*, 492 N.E.2d 661, 664 (Ind. 1986); Ind. Evidence Rule 101(d)(2). The rationale for the relaxation of the evidentiary rules at sentencing is that unlike at trial, the evidence is not confined to the narrow issue of guilt. *Kellett v. State*, 716 N.E.2d 975, 983 n.5 (Ind. Ct. App. 1999). Instead, the task is to determine the type and extent of punishment. *Id.* "This individualized sentencing process requires possession of the fullest information possible concerning the defendant's life and characteristics." *Thomas v. State*, 562 N.E.2d 43, 47 (Ind. Ct. App. 1990). Furthermore, as for Coleman's argument regarding this Court's reliance on the probable cause affidavit as facts in question, we note that our review of his sentence does not rely on any facts that Coleman raises or disputes in his motion. Therefore, by separate order issued contemporaneously with this opinion, we deny Coleman's motion to strike. We now address the sentencing issue before us.

II. Conditions of Probation

[10] Coleman argues that the trial court erred by imposing conditions of probation—that is, requiring him to attend anger management or conflict resolution classes. Coleman argues that because the plea agreement did not mention attending classes, the trial court's imposition of attending the classes as a condition of probation violated the plea agreement's provisions.

[11] "Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment." *Bratcher v. State*, 999 N.E.2d 864, 873 (Ind. Ct. App. 2013) (internal quotation

marks and citation omitted), *trans denied*. Indiana Code section 35-38-2-2.3 (2018) contains a host of requirements that a trial court may impose on a defendant as a condition of probation. "Trial courts have broad discretion in determining the appropriate conditions of a defendant's probation." *Howe v. State*, 25 N.E.3d 210, 213 (Ind. Ct. App. 2015). "This discretion is limited only by the principle that the conditions imposed must be reasonably related to the treatment of the defendant and the protection of public safety." *Id.* "This [C]ourt will not set aside the terms of a probation order unless the trial court has abused its discretion." *Collins v. State*, 911 N.E.2d 700, 707 (Ind. Ct. App. 2009), *trans. denied*. An abuse of discretion occurs "if the 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." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (internal quotation marks and citation omitted), *clarified on reh'g*, 875 N.E.2d 218.

[12] Although trial courts ordinarily have broad discretion in setting conditions of probation, accepting a plea agreement "imposes limits on [that] discretion[.]" *Berry v. State*, 10 N.E.3d 1243, 1247 (Ind. 2014) (quoting *Freije v. State*, 709 N.E.2d 323, 324 (Ind. 1999)). Once a trial court accepts a plea agreement it is bound by its terms. Ind. Code § 35-35-3-3(e) (2017); *State v. Smith*, 71 N.E.3d 368, 370 (Ind. 2017). "A plea agreement is contractual in nature, binding the defendant, the State, and the trial court." *Bennett v. State*, 802 N.E.2d 919, 921 (Ind. 2004). Once the trial court accepts the plea agreement, it "is strictly

bound by its sentencing provision and is precluded from imposing any sentence other than required by the plea agreement." *Id.*

[13] Regardless of the language of the plea agreement, however,

> trial courts are free to impose administrative or ministerial conditions "such as reporting to the probation department, notifying the probation officer concerning changes in address or place of employment, supporting dependents, remaining within the jurisdiction of the court, [and] pursing a course of vocational training[.]"

Freije, 709 N.E.2d at 325 (quoting *Disney v. State*, 441 N.E.2d 489, 494 (Ind. Ct. App. 1982)). These are the sort of conditions that are regularly imposed upon a defendant subject to probation, and a defendant who enters into a plea agreement that calls for a sentence to be served on probation should reasonably expect that the county's standard conditions may apply. *Freije*, 709 N.E.2d at 325. However, if a condition materially adds to the punitive obligation of a sentence, it may not be imposed in the absence of a provision in the plea agreement that gives the trial court discretion to set the conditions of probation. *Id.* Home detention and community service are such conditions of probation that have been found to "materially add to the punitive obligation" and thus "may not be imposed in the absence of a plea agreement provision giving the trial court discretion to impose conditions of probation." *Id.* at 325-26.

[14] Here, the written plea agreement reached between Coleman and the State does not contain a provision that requires anger management or conflict resolution

classes as a condition of Coleman's probation. The section of the plea agreement in which the parties could have included special conditions of probation to be imposed was left blank. Thus, the question before us is whether the condition of Coleman's probation that requires him to attend anger management or conflict resolution classes materially adds to the punitive obligation of his sentence or is more akin to an administrative or ministerial condition. To aid us in reaching our determination, we examine the decisions in *Disney*, *Johnson v. State*, 716 N.E.2d 983, 985 (Ind. Ct. App. 1999), and *Freije*.

[15] In *Disney*, this court held that it was "error for the [trial] court to include restitution or reparation as a condition of probation when there was no mention of such in the plea recommendation." 441 N.E.2d at 493. We found that the trial court "in effect *increased the penalty* by imposing a reparation condition which was not a part of the original explicit plea agreement." *Id.*

[16] In *Johnson*, we concluded that the trial court did not abuse its discretion by requiring the probationer to submit to a polygraph examination when requested despite the fact that the condition was not specified in Johnson's plea agreement. We found that the condition was less burdensome than home detention, community service, or restitution. We reasoned that requiring Johnson to submit to a polygraph was intended to serve a rehabilitative, not a punitive function and determined that such a requirement was

> no more burdensome than requiring [Johnson] to report periodically to his probation officer, a condition that undoubtedly could be imposed regardless of the language of the plea

> agreement . . . given that the results of the polygraph examination [we]re inadmissible and [could not] be used against Johnson in court without his explicit agreement.

716 N.E.2d at 985.

[17] In *Freije*, the probationer was ordered on home detention for two years and to perform 650 hours of community service as conditions of probation. Our Supreme Court held that these conditions were punitive and, thus, could not be imposed in the absence of a plea agreement provision giving the trial court discretion to impose conditions of probation. 709 N.E.2d at 325-26. However, the Court noted that some conditions of probation "such as attending a victim impact panel and completing a counseling or educational program" impose less substantial obligations that are rehabilitative in nature. *Id.* at 325.

[18] Here, the better practice would have been for the trial court to inform the parties of its desire to impose a condition on Coleman's probation before accepting the plea agreement. *See Disney*, 441 N.E.2d at 493 ("A court is not bound to accept a plea agreement worked out by the prosecutor and defendant."). This course of action may have led to a thorough discussion between the trial court and the parties, as well as clarification of the terms of the plea agreement, such that the trial court may not have accepted the plea agreement had it realized that its decision was questionable or rejected as a condition on Coleman's probation.

[19] Nevertheless, under the particular facts and circumstances herein, we conclude that the trial court's imposition of anger management or conflict resolution

classes as a condition of probation did not amount to an additional punitive obligation of his sentence. Instead, the condition was more like the condition of completing a counseling or educational program, which our Supreme Court found to be a less substantial obligation that is rehabilitative in nature, *see Freije*, 709 N.E.2d at 325, or pursuing a course of vocational training, which we found to be an administrative or ministerial condition. *See Disney*, 441 N.E.2d at 493-94 ("We do not mean to say that all of the terms of probation must be specified in the plea agreement. It would overburden the agreement to include all of the administrative or ministerial terms such as . . . pursuing a course of vocational training, and the like."). Therefore, we find that the requirement to attend anger management or conflict resolution classes as a condition of probation is an administrative or ministerial condition. It is an obligation that is rehabilitative in nature and does not materially add to the punitive obligation of Coleman's sentence. The trial court did not abuse its discretion at sentencing.

Conclusion

[20] Based on the foregoing, we conclude that the trial court was within its discretion to impose a probation condition requiring Coleman to participate in anger management or conflict resolution classes despite such condition not having been specified in Coleman's plea agreement.

[21] Affirmed.

Mathias, J., and Tavitas, J., concur.