

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Trevor Xavier Dahl,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

February 7, 2024

Court of Appeals Case No.
23A-CR-1761

Appeal from the Hamilton
Superior Court

The Honorable Jonathan M.
Brown, Judge

Trial Court Cause No.
29D02-2211-F1-8167

Memorandum Decision by Judge Pyle

Judges Bailey and Crone concur.

Pyle, Judge.

Statement of the Case

[1] Trevor Xavier Dahl (“Dahl”) appeals the aggregate sentence imposed by the trial court following his guilty plea to two counts of Level 1 felony attempted murder.¹ Dahl argues that his aggregate sentence of forty (40) years, with thirty-seven (37) years executed in the Indiana Department of Correction (“DOC”) and three (3) years in community corrections is inappropriate. However, Dahl’s plea agreement contained a provision that he was waiving his right to appeal his sentence so long as the trial court sentenced him within the terms of his plea agreement. Because the trial court sentenced Dahl within the terms of his plea agreement, we conclude that Dahl has waived his right to appeal his sentence. Accordingly, we dismiss this appeal.

[2] We dismiss.

Issue

Whether Dahl has waived his right to appeal his sentence pursuant to his written plea agreement.

Facts²

[3] Within a one-month period in October and November 2022, twenty-four-year-old Dahl engaged in four incidents of road rage while brandishing a handgun.

¹ IND. CODE §§ 35-42-1-1, 35-41-5-1.

² This underlying cause involves other causes that either consolidated into this cause or were part of Dahl’s plea agreement. Dahl did not include chronological case summaries for or relevant pleadings within these

In two of these incidents, Dahl fired his gun at the other drivers while they were in their cars. The State charged Dahl in three separate causes for these four incidents.

[4] In November 2022, the State charged Dahl, in cause number 29D02-2211-F1-8167 (“F1-8167”), with Count 1, Level 1 felony attempted murder; Count 2, Level 3 felony aggravated battery; Count 3, Level 5 felony intimidation; Count 4, Level 6 felony criminal recklessness; and Count 5, Level 6 felony pointing a firearm. Four of these charges stemmed from Dahl’s acts, on November 17, 2022, of firing multiple shots at Daniel Alejo, III (“Alejo”) after Alejo had honked his horn at Dahl. One of the shots fired by Dahl struck Alejo in the leg. The remaining charge stemmed from Dahl’s act of threatening the teenaged passenger who had been in Dahl’s vehicle.

[5] Thereafter, the State charged Dahl, in cause number 29D02-2211-F5-8183 (“F5-8183”), with Count 1, Level 1 felony attempted murder; Count 2, Level 5 felony intimidation; and Count 3, Level 6 felony criminal recklessness.³ These charges stemmed from Dahl’s acts, on November 14, 2022, of firing his handgun at and threatening Ronald Reasoner.

consolidated and related causes; therefore, we take judicial notice of those causes and the pleadings therein because they were part of the record before the trial court.

³ The State initially charged Dahl with intimidation and criminal recklessness but then amended the charging information to include the attempted murder charge.

- [6] In December 2022, the State charged Dahl, in cause number 29D02-2212-F5-8944 (“F5-8944”), with Counts 1 and 2, Level 5 felony intimidation; Counts 3 and 4, Level 6 felony pointing a firearm; Counts 5 and 6, Class A misdemeanor aggressive driving; and Count 7, Class C misdemeanor reckless driving. These charges stemmed from Dahl’s two separate acts, on October 20, 2022, of pointing his handgun at and threatening two separate victims.
- [7] In February 2023, the State moved to consolidate F1-8167, F5-8183, and F5-8944. Dahl objected, and the trial court held a hearing on the motion. The trial court granted the State’s motion in part and ordered for F1-8167 and F5-8183 to be consolidated and for F5-8944 to be tried separately. Thereafter, the State filed, in F1-8167, an amended charging information, containing the combined eight charges from F1-8167 and F5-8183.
- [8] In March 2023, the State charged Dahl, in cause number 29D02-2303-F2-2096 (“F2-2096”), with two counts of Level 2 felony conspiracy to commit murder. Specifically, the State alleged that, while in jail between February and March 2023, Dahl had conspired with another person to murder two witnesses who were expected to testify in F1-8167.
- [9] On May 31, 2023, in F1-8167, the State filed a notice of intent to introduce 404(b) evidence of Dahl’s conspiracy to commit murder crimes as alleged in F2-2096. That same day, Dahl entered into a guilty plea agreement in F1-8167. Dahl agreed to plead guilty to the two counts of Level 1 felony attempted murder in exchange for the State’s dismissal of: (1) the remaining six charges in

F1-8167; (2) all seven counts in F5-8944; (3) the two conspiracy to commit murder counts in F2-2096; (4) a charge of Class A misdemeanor driving while suspended with a prior conviction in cause number 29D04-2211-CM-8042; (5) a charge of Class A misdemeanor driving while suspended with a prior conviction in cause number 29D04-2211-CM-8041; and (6) a charge of Class A misdemeanor driving while suspended with a prior conviction in cause number 29D04-2209-CM-6384.

[10] Dahl's plea agreement contained various provisions regarding sentencing. Specifically, the plea agreement provided that Dahl's sentences on the two attempted murder convictions were to be served concurrently but that sentencing was otherwise left open to the trial court's discretion. Additionally, the plea agreement contained a sentence-appeal waiver that had been initialed by Dahl. This waiver provision provided as follows:

r. Unless otherwise provided for in this plea agreement, [Dahl] 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. [Dahl] understands that he otherwise would have a right to appeal his sentence if there were an open plea. [Dahl] hereby waives his right to appeal the sentence so long as the Court sentences him within the terms of the plea agreement. [Dahl] understands and waives his right to appeal the proportionality of the sentence under Article I, Section 16 of the Indiana Constitution; *therefore*, he knowingly and voluntarily agrees to waive his right to appeal his sentence on the basis that it is erroneous or for any other reason so long as the Court sentences him within the terms of this plea agreement.

(App. Vol. 63) (emphasis in original).

[11] The trial court held a guilty plea hearing in June 2023, and Dahl pleaded guilty to the two counts of attempted murder. During the plea hearing, the trial court established that Dahl had read the plea agreement and had reviewed it with his attorney. Additionally, the trial court confirmed that Dahl had signed and initialed the plea agreement.

[12] When sentencing Dahl, the trial court reviewed mitigating and aggravating circumstances. The trial court specifically noted that Dahl's criminal history was one of the "longest criminal histories [that it had] seen on a pre-sentence investigation report." (Tr. Vol. 2 at 119). For each of Dahl's Level 1 felony attempted murder convictions, the trial court imposed a sentence of forty (40) years, with thirty-seven (37) years executed in the DOC and three (3) years in community corrections, and, pursuant to the plea agreement, the trial court ordered these sentences to be served concurrently.

[13] Dahl now attempts to appeal his sentence.

Decision

[14] Dahl argues that his aggregate sentence of forty (40) years, with thirty-seven (37) years executed in the DOC and three (3) years in community corrections for his two Level 1 felony attempted murder convictions is inappropriate. Dahl asks this Court to reduce his aggregate sentence to thirty-three (33) years, with thirty (30) years executed and three (3) years in community corrections. We,

however, cannot address Dahl's challenge to his sentence because he waived appellate review of his sentence under the terms of his written plea agreement.

[15] Our Indiana Supreme Court has held that “a defendant may waive the right to appellate review of his sentence as part of a written plea agreement.” *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008). The *Creech* Court adopted the view of the Seventh Circuit “that defendants ‘may waive their right to appeal as part of a written plea agreement . . . as long as the record clearly demonstrates that it was made knowingly and voluntarily.’” *Id.* (quoting *United States v. Williams*, 184 F.3d 666, 668 (7th Cir. 1999)). The *Creech* Court held that a trial court is not required to make an “express finding” that a defendant has waived his appellate rights and that “[a]cceptance of the plea agreement containing the waiver provision is sufficient to indicate that, in the trial court’s view, the defendant knowingly and voluntarily agreed to the waiver.” *Id.* at 77. Furthermore, as our supreme court recently explained in *Davis v. State*, “defendants often plead guilty and agree (among other things) to waive their right to appeal their sentence in exchange for a more lenient sentence.” *Davis v. State*, 217 N.E.3d 1229, 1232 (Ind. 2023), *as modified on reh’g*.

[16] Here, Dahl’s written plea agreement provided that Dahl’s sentences for the two attempted murder offenses to which he was pleading guilty were to be served concurrently and that sentencing would otherwise be open to the trial court’s discretion. Dahl’s plea agreement contained a specific provision that he was waiving his right to appeal his sentence so long as the trial court sentenced him within the terms of his plea agreement. The trial court sentenced Dahl to a

term of forty (40) years with thirty-seven (37) years executed in the DOC and three (3) years in community corrections, and, within the terms of his plea agreement, it ordered these sentences on Dahl's two attempted murder convictions to be served concurrently.

[17] Based upon the language in Dahl's plea agreement and the fact that the trial court sentenced Dahl according to the terms of his plea agreement, we conclude that Dahl has waived his right to appeal his sentence. *See Davis*, 217 N.E.3d at 1235 (dismissing the defendant's appeal where his written plea agreement "unambiguously waived his right to appeal his sentence"); *Creech*, 887 N.E.2d at 74-75 (holding the defendant had waived his right to appeal his sentence pursuant to the express language in his written plea agreement). Accordingly, we will not address Dahl's argument that his sentence is inappropriate, and we dismiss this appeal.

[18] Dismissed.

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