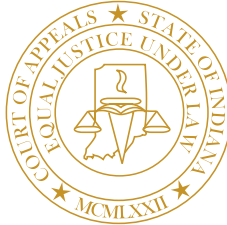


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Keith M. Minkosky,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

October 8, 2024

Court of Appeals Case No.
23A-CR-3012

Appeal from the Allen Superior Court

The Honorable David Zent, Judge

Trial Court Cause No.
02D06-2104-F5-155

Memorandum Decision by Judge Kenworthy
Judges Pyle and Felix concur.

Kenworthy, Judge.

Case Summary

- [1] Keith Minkosky, *pro se*, appeals his sentence after he pleaded guilty pursuant to a plea agreement. Because Minkosky waived the right to appeal his sentence as part of the agreement, and the trial court sentenced him to the agreed term, we dismiss.

Facts and Procedural History

- [2] In 2021, the State charged Minkosky with Level 5 felony domestic battery resulting in serious bodily injury; Level 6 felony domestic battery committed in the presence of a child less than sixteen years old; Level 6 felony domestic battery committed after a previous, unrelated conviction for domestic battery; Level 6 felony intimidation; and Level 6 felony strangulation. The State also alleged Minkosky was a habitual offender. The trial court issued a no contact order prohibiting Minkosky from contacting the alleged victim.
- [3] Later that year, the State filed an information for contempt alleging Minkosky violated the no contact order. The State filed a second contempt information in 2022 for the same reason. After finding Minkosky in contempt in November 2022, the trial court sentenced him to ninety days in jail for the first contempt and 180 days for the second, to be served consecutively for an aggregate sentence of 270 days.

- [4] In March 2023, on the morning of trial, Minkosky entered into a plea agreement with the State under which he agreed to plead guilty to Level 5 felony domestic battery and serve a fixed term of six years in the Indiana Department of Correction (“DOC”). In exchange, the State would dismiss the other four felony charges and habitual offender allegation. Under the written agreement, Minkosky waived his right to appeal the sentence on the basis it was “erroneous, inappropriate, unreasonable, or for any other reason, so long as the sentence is within the terms permitted by this plea agreement.” *Appellant’s App. Vol. 2* at 27.
- [5] During the plea hearing, the trial court asked Minkosky if he understood he waived his right to appeal the sentence by pleading guilty under a fixed-term plea agreement. Minkosky responded, “Yes.” *Tr. Vol. 2* at 6. The trial court then read the terms into the record. Minkosky testified he discussed the plea with his attorney and understood the terms of the agreement. At the end of the hearing, the trial court took the plea under advisement pending preparation of a presentence investigation report.
- [6] The trial court held a sentencing hearing about three weeks later. At the outset, Minkosky told the trial court he “was under the impression that the contempt time was going to get dismissed upon signing six years.” *Tr. Vol. 2* at 19. Minkosky did not move to withdraw his guilty plea. The trial court explained it had imposed the contempt sentences, noted contempt sentences are consecutive, and calculated Minkosky’s credit time on them. The trial court

then accepted the plea agreement and sentenced Minkosky to six years executed in the DOC with credit for time served.¹

- [7] Thereafter, Minkosky moved to correct erroneous sentence, alleging the deputy prosecutor had offered in an August 2022 email to dismiss the contempt charges in addition to the other counts as part of the plea agreement. The trial court denied the motion without a hearing. Minkosky then moved to correct error, seeking to set aside the trial court’s denial of the motion to correct erroneous sentence. After the motion to correct error was deemed denied, Minkosky appealed.

Minkosky waived his right to appeal his sentence, so we dismiss this appeal.

- [8] As part of his plea agreement, Minkosky waived his right to appeal his sentence so long as the trial court imposed the bargained-for terms. “When a defendant pleads guilty and agrees to a specific sentence, he waives his right to challenge the propriety of his sentence.” *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008). Acceptance of a plea agreement containing the waiver of appellate rights “is sufficient to indicate that, in the trial court’s view, the defendant knowingly and voluntarily agreed to the waiver.” *Id.* at 77.

¹ Minkosky had 114 days left to serve on the second contempt sentence. Rather than hold him in the county jail, the trial court reduced Minkosky’s jail time credit on this cause by 114 days to satisfy the contempt sentence, found he had completed his time for contempt, and released Minkosky to the DOC to serve his sentence in this case.

[9] Here, Minkosky agreed to plead guilty to a Level 5 felony and accept a six-year sentence executed in the DOC. In exchange, the State agreed to dismiss four pending charges and the habitual offender allegation. Although Minkosky informed the trial court at sentencing he thought his contempt sentences would be “dismissed” as part of the guilty plea, he did not move to withdraw his plea. After the trial court responded to Minkosky’s concern, the trial court asked, “Is there anything else you would like to say, sir?” *Tr. Vol. 2* at 19. Minkosky responded, “I’ll accept the plea.” *Id.* The trial court accepted the plea and sentenced him to six years executed in the DOC.

[10] The terms of the plea agreement are clear as to the offense to which Minkosky pleaded guilty, the length of the sentence to be imposed, and the charges that would be dismissed. And the plea agreement contained a waiver of appellate review of his sentence. Because Minkosky waived the right to appeal his sentence as part of his plea agreement and the trial court imposed the bargained-for sentence, we dismiss Minkosky’s appeal.

[11] Dismissed.

Pyle, J., and Felix, J., concur.

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