

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Thomas L. Wilson,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

June 7, 2024

Court of Appeals Case No.
23A-CR-2376

Appeal from the Hamilton Superior Court
The Honorable Michael A. Casati, Judge

Trial Court Cause No.
29D01-2205-F3-003398

Memorandum Decision by Judge Felix
Chief Judge Altice and Judge Bradford concur.

Felix, Judge.

Statement of the Case

[1] Thomas Wilson pled guilty to six counts of robbery, three counts of pointing a firearm, three counts of intimidation, three counts of theft, and one count of carrying a handgun without a license. At sentencing, the trial court vacated judgments on multiple charges to avoid double jeopardy violations. The trial court ultimately entered a judgment of conviction for three counts of robbery, one count of intimidation, and one count of carrying a handgun without a license. Wilson presents multiple issues on appeal which we revise and restate as follows:

1. Whether the trial court violated protections against double jeopardy; and
2. Whether the trial court abused its discretion in issuing consecutive sentences for the robbery and intimidation charges.

[2] The State cross-appeals, arguing that Wilson's appeal should be dismissed because he pled guilty.

[3] We dismiss Wilson's double jeopardy claim and affirm the trial court's sentencing decision.

Facts and Procedural History

[4] On the night of December 21, 2021, Daniela Torres, Anderson Hernandez, and Erick Chacon went to K1 Speed, an indoor go-kart racing facility, in Fishers, Indiana. While Torres was waiting to register for her race, she noticed Wilson standing with a group of friends who were also registering. Torres had a

friendly exchange with one of Wilson’s friends about an online discount that was available. After this exchange, Torres pulled out \$90 in cash from her wallet to pay for the racing, but Hernandez decided to pay for their racing with his card, so Torres put the cash back in her pocket. Torres, Hernandez, and Chacon raced at the same time as Wilson and his friends. During the race, “[e]verything was friendly” between the two groups. Tr. Vol. II at 41.

Following the race, Torres noticed Wilson and his friends leave K1. As Wilson was leaving the building, a K1 employee heard him complaining about the price for racing and then say: “[I]t’s cool, I’m getting my money back anyway.”

Appellant’s App. Vol. II at 20.

[5] Soon afterwards, Torres, Hernandez, and Chacon left K1 and had gotten a few steps into the parking lot when Wilson approached them wearing a black mask and pointing a handgun. Wilson demanded they give him all their money and chambered a round into his gun. Wilson told Torres: “I seen you pull out money in the cashier shoddy. . . . Give me it.” Tr. Vol. II at 44–45. Torres and Chacon gave Wilson all their cash. Hernandez did not have any cash, so he gave up his car keys. Wilson began walking away and said: “If you snitch, I’m going to kill you.” *Id.* at 43.

[6] Law enforcement later identified Wilson by using K1’s surveillance video and the information Wilson provided while registering for the race. The State charged Wilson with six counts of robbery as a Level 3 felony, three counts of pointing a firearm as a Level 6 felony, three counts of intimidation as a Level 5 felony, three counts of theft as a Class A misdemeanor, and one count of

carrying a handgun without a license as a Class A misdemeanor. After the first day of jury trial, without the benefit of a plea agreement, Wilson pled guilty to all counts. At sentencing, the trial court vacated multiple counts to avoid double jeopardy violations; the trial court entered a judgment of conviction for three counts of robbery as a Level 3 felony (one for each of the victims), one count of intimidation as a Level 5 felony, and one count of carrying a handgun without a license as a Class A misdemeanor. The trial court ordered the sentences for the robbery counts and carrying a handgun without a license count to be served concurrently and the intimidation sentence to be served consecutively. In total, the trial court issued a 17-year aggregate sentence with 15 years executed and 2 years suspended to probation. Wilson now appeals.

Discussion and Decision

1. Wilson Cannot Challenge His Convictions on Direct Appeal

[7] Wilson argues that the trial court violated double jeopardy protections because he received multiple punishments for the same conduct in regard to his convictions for robbery and intimidation. The State contends that we should dismiss Wilson’s appeal because he pled guilty. We agree with the State.

[8] “One consequence of pleading guilty is restriction of the ability to challenge the conviction on direct appeal.” *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996). This restriction applies to plea agreements as well as open pleas. *See Yost v. State*, 150 N.E.3d 610, 613 (Ind. Ct. App. 2020). Our Supreme Court has recently held that a defendant who has pled guilty cannot appeal a conviction

based on substantive double jeopardy grounds. *McDonald v. State*, 179 N.E.3d 463, 464 (Ind. 2022) (summarily affirming and quoting *McDonald v. State*, 173 N.E.3d 1043, 1047 (Ind. Ct. App. 2021)). Rather, a defendant who has pled guilty must challenge his convictions through post-conviction relief. *Yost*, 150 N.E.3d at 612–13 (citing *Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001)).

[9] We note that, after Wilson entered his guilty pleas on all counts, he told the trial court that the intimidation conviction could be entered independently of the robbery conviction. Tr. Vol. II at 134. However, Wilson now argues that the robbery and intimidation constituted a single transaction. Analysis of this claim requires a fact-intensive inquiry, and thus post-conviction relief is the proper avenue. *See Hayes v. State*, 906 N.E. 2d 819, 821 n.1 (Ind. 2009) (citing *Tumulty*, 666 N.E.2d at 396).

2. The Trial Court Did Not Abuse Its Discretion by Imposing Consecutive Sentences for Wilson’s Robbery and Intimidation Convictions

[10] Wilson also challenges his sentence, and since the trial court exercised discretion over sentencing, his challenge must be addressed through direct appeal. *Kling v. State*, 837 N.E.2d 502, 504 (Ind. 2005). Wilson claims the trial court abused its discretion by ordering consecutive sentences for the robbery and intimidation convictions. We review sentencing decisions for abuse of discretion. *Spells v. State*, 225 N.E.3d 767, 771 (Ind. 2024) (citing *Holder v. State*, 119 N.E.3d 621, 624 (Ind. Ct. App. 2019)). We will reverse only when a decision “is clearly against the logic and effect of the facts and circumstances

before the court or if the court has misinterpreted the law.” *Id.* (quoting *Abbott v. State*, 183 N.E.3d 1074, 1083 (Ind. 2022)).

[11] Wilson contends that his consecutive sentences for robbery and intimidation violate protections against double enhancements. Specifically, Wilson complains that his use of the firearm enhanced the robbery charges from a Level 4 felony to a Level 3 felony, and the same use of the firearm enhanced the Intimidation charge from a Level 6 felony to a Level 5 felony. To Wilson, this seems unfair: “The use of these progressive penalty statutes therefore begs the question as to whether the sentences for those counts should be permitted to run consecutively.” Appellant’s Brief at 9. “There are three types of statutes authorizing enhanced sentences for recidivist offenders: the general habitual offender statute, specialized habitual offender statutes, and progressive-penalty statutes.” *Dye v. State*, 972 N.E.2d 853, 857 (Ind. 2012) (citing *State v. Downey*, 770 N.E.2d 794, 795–96 (Ind. 2002)). “Double-enhancement issues arise where more than one of these statutes is applied to the defendant at the same time.” *Id.* (citing *Downey*, 770 N.E.2d at 795–98.) Our Supreme Court defined “progressive-penalty statutes” as those that “elevate the level of an offense . . . where the defendant previously has been convicted of a particular offense.” *Ibid.*

[12] Seemingly aware that the situation here is not a “progressive-penalty statute”, Wilson contends “it nonetheless involves a situation where the penalties Wilson faces for his conduct are enhanced twice for the same use of a firearm. Consequently he’s being punished twice for the same conduct.” Appellant’s Br.

at 9–10. Ultimately, Wilson asks for the sentence on the intimidation conviction to be run concurrently to the other sentences.

[13] This issue has been reviewed previously. In *Miller v. State*, our Supreme Court determined there was no violation of Double Jeopardy Clause when Defendant convicted of enhanced offenses for confinement, robbery, and criminal deviate conduct all of which occurred while Defendant threatened the use of a knife. 790 N.E.2d 437, 439 (Ind. 2003). Also, in *Moore v. State*, Moore was convicted of criminal confinement and intimidation both as enhanced offenses because he used an unloaded pellet gun during the commission of the crimes. There, Moore requested that we “remove the ‘deadly weapon’ enhancement.” 137 N.E.3d 1034, 1038 (Ind. Ct. App. 2019). We declined Moore’s request because he used the weapon during the commission of the offenses; he did not merely possess a weapon. *Id.* Similarly, Wilson, while armed with a deadly weapon, pointed it at three people and forced them to give up their hard-earned money and only mode of transportation. Afterwards, while still having the firearm drawn, he threatened that he would kill them if they called the police. We find this situation akin to the facts of *Miller* and *Moore* and decline to find any error in the trial court’s decision to run the intimidation sentence consecutively to the armed robbery sentences.

Conclusion

[14] By pleading guilty, Wilson foreclosed his ability to challenge his convictions on direct appeal, and the trial court did not abuse its discretion by issuing

consecutive sentences for the robbery and intimidation charges. We therefore dismiss Wilson's double jeopardy claim and affirm Wilson's sentence.

[15] Affirmed in part and dismissed in part.

Altice, C.J., and Bradford, J., concur.

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