

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tyler J. Denney,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 10, 2022

Court of Appeals Case No.
22A-CR-526

Appeal from the Morgan Superior
Court

The Honorable Brian H. Williams,
Judge

Trial Court Cause No.
55D02-2006-F5-940

Bradford, Chief Judge.

Case Summary

- [1] After drinking beer throughout the day, Tyler Denney drove his truck into oncoming traffic and struck a vehicle, seriously injuring both of its occupants. Denney and the State entered into a plea agreement wherein Denney would plead guilty to Level 5 felony causing serious bodily injury when operating a motor vehicle with a blood alcohol concentration (“BAC”) of 0.08 or more, Denney would waive his right to sentence review, and the State would cap his sentence at four years. The trial court sentenced Denney to 730 days of incarceration. Denney argues that we should distinguish or depart from the Indiana Supreme Court’s holding in *Creech v. State*, 887 N.E.2d 73 (Ind. 2008), so that we might disregard his waiver and review his sentence. Because we decline this invitation and Denney has waived any review of his sentence, we dismiss.

Facts and Procedural History

- [2] Sometime on May 23, 2020, Denney played eighteen holes of golf with his friends. Denney drank approximately four or five beers during the five hours he was at the golf course. Denney and his friends then went to a restaurant for lunch, where Denny consumed two thirty-two-ounce beers. Shortly after finishing his last beer at the restaurant, Denney attempted to drive his vehicle home.

- [3] Around 4:50 p.m. that afternoon, Sarah Fletcher was driving her daughter, seventeen-year-old Emily Kearby, home from picking up a gift to celebrate Kearby's upcoming high school graduation. Fletcher was westbound on State Road 44 when she observed a truck, driven by Denney, "swerving all over the roadway," including into her lane. Appellant's App. Vol. II p. 16. Though Fletcher attempted to avoid a collision with the truck, she was unable to do so. Denney struck Fletcher's vehicle head-on. Fletcher's vehicle then left the roadway, "turned over multiple times," landed on its passenger side, and came to rest against a tree. Tr. Vol. II p. 20.
- [4] Fletcher and Kearby both suffered serious injuries. Kearby was removed from the vehicle and transported to Riley Hospital after complaining of lower back and abdominal pain. Fletcher, however, was trapped in her vehicle for some time longer than her daughter and had to be "cut from the car[.]" Appellant's App. Vol. II p. 20. Following her extraction, Fletcher was diagnosed with a compound fracture to her right leg and fractures to her ribs. Fletcher was transported to Methodist Hospital in Indianapolis by helicopter. When Kearby arrived at the hospital, it was determined that she had suffered a burst fracture to her spine, which required immediate surgery. Fletcher, who was taken to a different hospital, was diagnosed with a broken foot, fracture to her right femur, right patella fracture, multiple rib fractures, and also required immediate surgery.
- [5] Morgan County Sherriff's Deputy Ryan Thompson, who had arrived at the scene shortly after EMS and firefighters, spoke with Denney. Denney reported

to Deputy Thompson that he “was fine” at first, but later reported that he was concerned that he may have hit his head during the crash. Appellant’s App. Vol. II p. 37. Deputy Thompson observed that Denney smelled of alcohol, was slurring his speech, had red and watery eyes, and poor balance. Denney submitted to a portable breath test, which indicated a concentration of 0.093 grams of alcohol per 210 liters of breath. Denney was then transported to a hospital for medical treatment and a blood draw. The results of the blood draw showed that Denney’s blood alcohol concentration was equivalent to 0.132 grams of alcohol per 100 milliliters of blood.

[6] On June 23, 2020, the State charged Denney with Level 5 felony causing serious bodily injury when operating a motor vehicle with an BAC of 0.08 or more and Level 5 felony causing serious bodily injury when operating a vehicle while intoxicated. Denney and the State eventually entered into a plea agreement wherein he would plead guilty to Level 5 felony causing serious bodily injury when operating a motor vehicle with a BAC of 0.08 or more and the State would dismiss the other charge and cap his sentence at four years. Denney also agreed to the following term in that plea agreement:

The Defendant knowingly, intelligently, and voluntarily waives his right to challenge the sentence on the basis that it is erroneous and further waives his right to have the Court of Appeals review his sentence under Indiana Appellate Rule 7(B).

Appellant’s App. Vol. II p. 19. Ultimately, the trial court sentence Denney to 730 days of incarceration.

Discussion and Decision

- [7] “[D]efendants ‘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.’” *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008) (quoting *United States v. Williams*, 184 F.3d 666, 668 (7th Cir. 1999)). “Of course, defendants who bargain to plead guilty in return for favorable outcomes ‘give up a plethora of substantive claims and procedural rights.’” *Id.* (citing *Games v. State*, 743 N.E.2d 1132, 1135 (Ind. 2001)). The Indiana Supreme Court has adopted the Seventh Circuit’s view of consistently upholding valid appeal waivers and dismissing appeals taken in contravention. *Id.* (citing *Williams*, 184 F.3d at 668).
- [8] In requesting that we review his case, Denney invites us to depart from *Creech*, an invitation which we are required to decline. “It is not our role to reconsider or declare invalid decisions of the Indiana Supreme Court. In fact, we are bound by our supreme court’s decisions, and its precedent is binding on us until it is changed by our supreme court or legislative enactment.” *Continental Insurance Co. v. Wheelabrator Technologies, Inc.*, 960 N.E.2d 157, 162 (Ind. Ct. App. 2011). Moreover, although Denney also invites us to distinguish *Creech*, he offers no basis on which to do so. Consequently, although Denney argues that his sentence is inappropriate in light of the nature of his offense and his character and that the trial court erred in identifying improper aggravating circumstances, due to his plea-agreement waiver, we cannot review these arguments. *Creech*, 887 N.E.2d at 75 (citing *Williams*, 184 F.3d at 668)

(upholding “valid appeal waivers and dismissing appeals taken in contravention”).

[9] Dismissed.

Bailey, J., and Najam, Sr.J., concur.