

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brian Taylor,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 16, 2023

Court of Appeals Case No.
22A-CR-1443

Appeal from the Lawrence
Superior Court

The Honorable John Plummer, III,
Judge

Trial Court Cause No.
47D-2011-F3-1842

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

- [1] Brian Taylor appeals his sentence following his conviction of Level 3 felony neglect of a dependent.¹ Taylor raises two issues for our review, but we find one dispositive: whether Taylor forfeited his right to appeal his sentence as part of his plea agreement. Because Taylor expressly waived his right to appeal his sentence, we dismiss his appeal.

Facts and Procedural History

- [2] On September 25, 2020, Taylor's infant son, A.M., ingested Suboxone while in Taylor's care. A.M. lost consciousness, and his mother took him to the hospital. At the hospital, staff also noticed bruising and burn marks on A.M.'s body.
- [3] On November 18, 2020, the State charged Taylor with Level 3 felony neglect of a dependent and Level 3 felony domestic battery resulting in serious bodily injury to a person less than fourteen years old.² On March 11, 2022, Taylor entered into a plea agreement in which he agreed to plead guilty to Level 3 felony neglect of a dependent. In exchange, the State agreed Taylor's sentence would be capped at seven years in the Indiana Department of Correction, and the State agreed to dismiss the Level 3 felony domestic battery charge. The plea agreement further provided:

¹ Ind. Code § 35-46-1-4(b)(2) (2019).

² Ind. Code § 35-42-2-1.3(e) (2020).

Defendant **waives** the right to challenge the trial court's findings and its balancing of mitigating and aggravating factors. As a condition of entering this plea agreement, I knowingly and voluntarily agree to waive my right to appeal my sentence on the basis that it is erroneous or for any other reason so long as the Judge sentences me within the terms of my plea agreement.

(App. Vol. II at 82) (emphasis in original). Two sheets of paper attached to the plea agreement advised Taylor of his various rights as a criminal defendant, including "I understand that if I am convicted of any charge I have the right to appeal my conviction to the Indiana Court of Appeals or the Indiana Supreme Court, but there are certain time limits that must be met to perfect such appeal." (*Id.* at 84.) The advisement also notified Taylor that a Level 3 felony was punishable by imprisonment for a term of between three years and sixteen years, with an advisory term of nine years.

[4] On March 15, 2022, the trial court held a hearing in which Taylor changed his plea to the charge of Level 3 felony neglect of a dependent to guilty. During that hearing, the trial court reviewed the terms of Taylor's plea agreement. The trial court explained:

So long as the Court follows the plea agreement and sentences the defendant within the boundaries of the plea agreement, then Mr. Taylor waives his right to appeal the Court's entry of judgment of conviction against him, for that which he pleads guilty. And also, he would not be allowed or permitted to appeal. He's waiving his right to appeal all other decisions, including the sentencing order of the Court, because he's agreeing to these terms in the plea agreement.

(Supp. Tr. Vol. II at 5.) The trial court also advised Taylor in open court of the various rights Taylor possessed as a criminal defendant, including that if he elected to go to trial and was convicted, Taylor would have the right to appeal his conviction and sentence to this Court. After the trial court went over the terms of the plea agreement with Taylor and advised him of his rights, Taylor formally changed his plea to guilty. The trial court held Taylor's sentencing hearing on May 23, 2022. The trial court then sentenced Taylor to a seven-year term of incarceration, which was the maximum term allowed by the plea agreement.

Discussion and Decision

[5] Taylor appeals to challenge the sentence he received after he pled guilty. A plea agreement is a contract, and once accepted by the trial court, the agreement's terms bind the State, the defendant, and the trial court. *Nolan v. State*, 177 N.E.3d 881, 884 (Ind. Ct. App. 2021), *trans. denied*. "A defendant may waive his or her right to appeal a sentence as part of a plea agreement and such waivers are valid and enforceable." *Id.*

[6] Taylor asserts he "did not waive his right to appeal the sentence imposed after pleading to a 'capped' agreement, because to the extent that there was any waiver, it was not knowing or voluntary." (Appellant's Br. at 12.) However, in *Creech v. State*, our Indiana Supreme Court held that a trial court's acceptance of a plea agreement containing a provision waiving the defendant's right to appeal his sentence is "sufficient to indicate that, in the trial court's view, the

defendant knowingly and voluntarily agreed to the waiver.” 887 N.E.2d 72, 77 (Ind. 2008). Taylor’s written plea agreement stated: “As a condition of entering this plea agreement, I knowingly and voluntarily agree to waive my right to appeal my sentence on the basis that it is erroneous or for any other reason so long as the Judge sentences me within the terms of my plea agreement.” (App. Vol. II at 82.) Taylor’s written plea agreement contained the exact language we encouraged parties to adopt when a defendant waives his appellate rights as part of a plea agreement. *Bowling v. State*, 960 N.E.2d 837, 843 (Ind. Ct. App. 2012), *trans. denied*. We explained such language “avoid[s] even the possibility of confusion[.]” *Id.* Thus, under the plain terms of the written plea agreement, Taylor waived his right to appeal his sentence. Moreover, Taylor benefited from the plea agreement because the agreement capped his sentence to a term two years below the advisory term for a Level 3 felony and because the State dismissed the pending Level 3 felony domestic battery charge.

- [7] In addition, when the trial court reviewed the terms of the plea agreement with the parties, the court noted one of the terms of the agreement was that Taylor waived his right to appeal his sentence. Neither Taylor nor the State asserted that term was not part of the agreement. The trial court also informed Taylor of the considerable rights criminal defendants possess if they choose to go to trial, including the right to appeal one’s conviction or sentence. The court then asked Taylor: “Knowing all of that, is it still your intention to plead guilty pursuant to the plea agreement or do you want you [sic] trial?” (Supp. Tr. Vol. II at 7-8.) Taylor confirmed he still desired to plead guilty. Because Taylor expressly

waived his right to appeal his sentence, both in his written plea agreement and in open court when entering his guilty plea, we dismiss his appeal. *See Starcher v. State*, 66 N.E.3d 621, 623 (Ind. Ct. App. 2016) (dismissing defendant's appeal when the plain terms of his plea agreement demonstrated he waived his right to appellate review of his sentence), *trans. denied*.

Conclusion

- [8] Taylor waived his right to appeal his sentence as a condition of his plea agreement. We accordingly dismiss Taylor's appeal.
- [9] Dismissed.

Mathias, J., and Bradford, J., concur.