



IN THE
Indiana Supreme Court

Supreme Court Case No. 21S-CR-113

Danny Lee Williams,
Appellant,

–v–

State of Indiana,
Appellee.

Decided: March 16, 2021

Appeal from the Clark Circuit Court

No. 10C02-1805-F2-22

The Honorable Bradley B. Jacobs, Judge

On Petition to Transfer from the Indiana Court of Appeals

No. 20A-CR-910

Per Curiam Opinion

Chief Justice Rush and Justices David, Massa, Slaughter, and Goff concur.

Per curiam.

Danny Lee Williams pleaded guilty to Dealing in Methamphetamine, a Level 3 felony, and Dealing in a Narcotic Drug, a Level 4 felony. The plea agreement called for the two sentences to run concurrently, with sentencing left to the discretion of the trial court, and Williams checked a box that stated, “DEFENDANT WAIVES RIGHT TO APPEAL.” The trial court sentenced Williams to six years for the Level 3 felony charge and two years for the Level 4 felony charge, for a total of six years executed.

At the sentencing hearing, the judge advised Williams that by pleading guilty, he was waiving the right to appeal his conviction; but the judge failed to clarify whether Williams also was waiving the right to appeal his sentence. Despite this failure to clarify, the sentencing order stated that Williams waived his right to appeal “the sentence imposed by the Court that is within the range set forth in the agreement.” The court then appointed a public defender “for purposes of preparing and filing an appeal in this matter.” After Williams filed his appellant’s brief, in which he argued his sentence is inappropriate, the Court of Appeals granted the State’s motion to dismiss the appeal on grounds that Williams waived the right to appeal his sentence.

In *Johnson v. State*, 145 N.E.3d 785, 786-87 (Ind. 2020), we held that a plea agreement’s generalized statement that the defendant “waives right to appeal,” without more, was insufficient to establish the knowing and voluntary waiver of the defendant’s right to appeal his sentence. Here, it is not apparent from the plea agreement or the colloquy at the sentencing hearing that Williams knowingly and voluntarily waived the right to appeal his sentence. We grant transfer for the sole purpose of reminding trial judges that the plea agreement, guilty plea and sentencing hearing colloquy, and sentencing order must be clear and consistent as to whether a defendant waives only the right to appeal the conviction or the right to appeal the conviction and sentence. We affirm the sentence imposed by the trial court, which allows Williams to seek a sentence modification upon his successful completion of a substance abuse treatment program and is not one of the outliers Appellate Rule 7(B) is intended to leaven. See *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008).

Rush, C.J., and David, Massa, Slaughter, and Goff, JJ., concur.

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