

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

John C. Mefford,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 15, 2021

Court of Appeals Case No.
20A-CR-1375

Appeal from the Jefferson Superior
Court

The Honorable Michael J.
Hensley, Judge

Trial Court Cause Nos.
39D01-1907-F6-952, 39D01-1908-
F6-1003

Altice, Judge.

Case Summary

[1] John Mefford entered into a plea agreement in which he pled guilty to two Level 6 felonies and agreed to a fixed sentence of five years executed. The plea agreement provided that the trial court would defer entering judgment of conviction in exchange for Mefford participating in the Jefferson County Drug Court Program (Drug Court). After Mefford violated the terms of Drug Court, the trial court terminated his participation from the program, entered judgment of conviction for the two Level 6 felonies, and sentenced him to five years executed. Mefford now appeals and raises the following restated issue: Did the trial court have discretion to impose anything less than the executed five years provided in the plea agreement?

[2] We affirm.

Facts & Procedural History

[3] In July 2019, Mefford was charged under Cause No. 39D01-1907-F6-952 (Cause F6-952) with Level 6 felony possession of methamphetamine, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia. In August 2019, he was charged under Cause No. 39D01-1908-F6-1003 (Cause F6-1003) with Level 6 felony auto theft, Level 6 felony resisting law enforcement with a vehicle, and Class C misdemeanor reckless driving.

[4] On January 23, 2020, Mefford entered into a plea agreement (Plea Agreement) disposing of both causes. Mefford pled guilty to Level 6 felony possession of methamphetamine in Cause F6-952 and Level 6 felony auto theft in Cause F6-

1003, and the State agreed to dismissal of remaining counts.¹ In addition, the Plea Agreement contained the following terms:

5 . At the time this agreement is accepted by the Court, the Court shall defer entering a judgment of conviction and allow the Defendant to enter into the Jefferson County Drug Court Program.

6 . If the Defendant successfully completes the Drug Court Program, the State will dismiss the charges to which the Defendant pleads guilty[.]

7 . If the Defendant quits, is terminated, or fails to complete the Drug Court Program, the Court shall enter judgment of conviction to the charge[s] plead[ed] guilty to . . . without a trial, and proceed to a sentencing hearing at which the Defendant *shall be sentenced to*:

The defendant *shall be sentenced* in cause #F6-952 on Count 1: Possession of Methamphetamine, Level 6 felony, to the Indiana Department of Correction for a term of two and one-half (2 ½) years, none of which shall be suspended, consecutive with cause #F6-1003 on Count I : Auto Theft, a Level 6 felony, to the Indiana Department of Correction for a term of two and one-half (2 ½) years, none of which shall be suspended, *for a total of five (5) years, all executed.*

Appellant's Appendix at 39-40 (emphases added).

¹ We note that the Plea Agreement refers to dismissal of the remaining counts in Cause F6-1003 but does not mention dismissal of the remaining counts in Cause F6-952. However, the guilty plea hearing reflects that the remaining counts of Cause F6-952 were being dismissed as well.

[5] At the January 23, 2020 guilty plea hearing, the trial court reviewed the terms of the Plea Agreement with Mefford and asked him if he understood that he was “agreeing to the maximum possible sentence in this case” and Mefford said, “Yes, sir.” *Transcript Vol. II* at 20. As the court was reading the charges, the court paused and commented, apparently in response to Mefford’s expressions or gestures:

COURT: Sir, somebody once told me, it’s only funny when the judge laughs, and I’m not laughing. If I get five years in prison, I ain’t laughing. I’m not even smiling a little bit. So, if you don’t want to take it serious, that’s okay with me. Because all I have to say is no drug court and it’s over.

Id. Returning to the matter at hand, the court then outlined the rights that Mefford was giving up by pleading guilty.

[6] Given Mefford’s “attitude,” the trial court expressed reservations about whether Mefford would be successful in Drug Court:

I’m just trying to get you to understand something here. You’re pleading guilty, after today, there’s nothing. You mess up in [D]rug [C]ourt, boom, it’s five years, you’re done, it’s over. You don’t get to make any arguments to the Court. You don’t get to ask for lesser time. You do five years.

Id. at 23. The court asked Mefford if he wanted to accept those terms of the Plea Agreement, and Mefford said he did. The court emphasized:

What you’re saying to me today is, Judge, I’m pleading guilty. I’m taking five years. You’re gonna hold that over my head. I’ll

be in drug court. I mess up in drug court, no ifs, and buts, it's goodbye, I'm gone for five years. You understand that?

Id. at 23-34. And Mefford replied in the affirmative. The court further explained to Mefford that, if he did not succeed in Drug Court, he would receive no credit time for electronic monitoring: “[Y]ou still got the whole five years to serve except for the time you’ve already served, plus good time.” *Id.* at 24. Mefford expressed that he understood. The State then established a factual basis for the two felonies, and the trial court accepted Mefford’s plea and the Plea Agreement calling for “consecutive sentences, one after the other, for a five year sentence,” which the court ordered would be “held in abeyance pending outcome of drug court.” *Id.* at 26.

[7] The court then issued a written Order to Enter Drug Court Program, stating that, pursuant to Ind. Code § 33-23-16-14 concerning deferred prosecution, the trial court “defers entering judgment of conviction at this time and orders [Mefford] into [Drug Court] pursuant to the plea agreement.” *Appellant’s Appendix* at 54. The order also included the following:

If the defendant quits, is terminated, or fails to complete the program, the Court shall enter a Judgment of Conviction against the defendant and will sentence the defendant, without a trial, in cause number 39DO1-1 907-F6-952 to the charge of Count #1, Possession of Methamphetamine, a Level 6 Felony, to serve two and one-half (2 ½) years at the Indiana Department of Correction, fully executed, with credit for two (2) days of time served. This sentence will run consecutive to a two and one-half (2 ½) year sentence at the Indiana Department of Correction on the charge of Count #1, Auto Theft, a Level 6 Felony, in cause

number 39DO1-1908-F6-1003, fully executed, with credit for time served from August 11, 2019 through January 23, 2020.

Id.

[8] That same day, Mefford executed an Agreement to Enter Drug Court Program and Participation Agreement (Participation Agreement), in which Mefford agreed, among other things, that the “[t]he Court will defer entering a judgment of conviction, and subject the Defendant to conditions established by the Drug Court Program.” *Id.* at 43. The Participation Agreement further provided that if he violated the conditions of Drug Court, “the Drug Court Team will review the case to determine appropriate sanctions for the violation” and “if the team decides for termination from the [] Program, the case will be set for a termination hearing,” where Mefford would be provided counsel and have the opportunity to present evidence and confront witnesses against him. *Id.* at 50. The Participation Agreement stated that, after a hearing, the court “may terminate” his participation in the Drug Court program, and “if [he] is terminated from the Program, [he] will be sentenced by the [trial court] pursuant to the terms of the original plea agreement.” *Id.* at 43, 51.

[9] About a week later, on January 31, Mefford tested positive for methamphetamine, THC, and Suboxone. In February, he admitted to using methamphetamine, had multiple monitoring violations, and failed to appear for a Drug Court hearing. As a sanction, the court on February 19 ordered Mefford to complete inpatient treatment at Cornerstone Recovery Center (CRC) and, upon his release, go to the Jefferson House. Mefford was at the

CRC from February 27 to March 26 and completed the program, but was not able to go to Jefferson House as ordered because it was closed due to COVID-19.

[10] Mefford thereafter committed additional violations, and the Drug Court Team voted on April 8, 2020 to terminate him from Drug Court. On April 14, 2020, the State filed a Petition to Terminate Mefford from Drug Court, alleging the following violations:

a. The Defendant tested positive for methamphetamine, THC and suboxone on January 31, 2020, tested positive and admitted to methamphetamine use on February 7, 2020, missed UDS line^[2] on February 5, 2020 and on February 10, 2020, had monitor violations on February 10, 2020 and February 11, 2020, and did not show for court on February 12, 2020. For these violations, on February 19, 2020 the court ordered the Defendant apply and complete the Centerstone Recovery Center Program and go to the Jefferson House upon release.

b. The Defendant admitted to using methamphetamine on March 30, 2020, monitor violations on February 29, 2020 through April 1, 2020 and April 4, 2020 through April 6, 2020, missed the UDS line on April 5, 2020 and April 13, 2020, missed an appointment with case manager on April 7, 2020.

² The record reflects that “UDS line” refers to the requirement of participants calling to check in and “it will tell them whether or not they will have to come to the office to screen that day or not.” *Transcript Vol. II* at 41. The purpose is to “hold [participants] accountable.” *Id.*

c. The Defendant has not followed up with treatment as of April 13, 2020.

d. The Defendant failed to pay fees as directed. He currently owes \$1215.

Appellant's Appendix at 56. The trial court issued a warrant for Mefford's arrest that date, and Mefford turned himself in on April 27. At the April 28, 2020 initial hearing, the trial court appointed an attorney to represent him.

[11] On May 27, 2020, the trial court held a due process hearing on the State's petition to determine whether Mefford had violated the terms of the Participation Agreement and if he should be terminated from the drug court program. Erin Beatty, a Drug Court case manager, testified regarding the various violations alleged in the petition. Beatty stated that Mefford completed the CRC program at the end of March 2020 "but he did not go to the Jefferson House because of COVID-19. They shut their doors." *Id.* at 41. Mefford was also supposed to continue outpatient treatment through CRC, which was being done by "telehealth" meetings due to COVID-19, but Mefford did not contact CRC to do so, although the appointments were "already set up when he left CRC." *Id.* at 46.

[12] Mefford testified to attending Drug Court meetings prior to CRC and then attending the CRC program from February 27 to March 26, during which time he "stayed clean[.]" *Id.* at 48. Mefford acknowledged that he used methamphetamine on March 30, days after his release from CRC, but

explained that he “really needed” the Jefferson House, which had shut down, and that the pandemic interfered with his ability to fully and successfully participate in Drug Court. *Id.* at 49. He testified that, if the court would refrain from terminating him from Drug Court, he would willingly go to the Jefferson House, urging, “I know I could do it.” *Id.* at 50. He acknowledged that he missed required UDS calls but explained that that he did attend or attempt to join by video chat certain appointments that he was alleged to have missed in April 2020, but Drug Court was experiencing problems with some video meetings.

[13] The State requested that Mefford be terminated from Drug Court, whereas Mefford’s counsel urged that Mefford did not have a fair chance to complete and comply with Drug Court due to COVID-19. Mefford’s counsel noted the difficulty with being released from inpatient CRC to “the haywire experiences that everybody has had to deal with,” including how to do things remotely, and the closure of Jefferson House. *Id.* at 53. As a result, Mefford “got completely off track,” and his counsel asked the court to impose sanctions on Mefford prior to terminating him from the program. *Id.* at 54.

[14] The trial court issued a decision from the bench, terminating Mefford from Drug Court. In so doing, the court acknowledged “that timing here for [Mefford] probably couldn’t have been worse,” referring to COVID-19, but stated that, from the beginning, Mefford’s participation in the program was poor: “He didn’t show up[,]” and he was having monitor violations “just everywhere.” *Id.* at 54-55. Because of the poor performance from the start, the

court ordered Mefford to complete the CRC inpatient treatment, which the court considered “a fairly stiff sanction out of the gate[.]” *Id.* at 54.

[15] The court acknowledged that “it’s a difficult decision for the Court to make, here[.]” but ultimately determined that “there has [sic] been violations of the Drug Court Agreement” and “they do justify the sentence as set forth in that agreement and signed by the defendant on the 23rd of January.” *Id.* at 55. That same day, the trial court issued a corresponding written order terminating Mefford’s participation in Drug Court.

[16] At the June 23, 2020 sentencing hearing, the court advised Mefford that it was “bound” to sentence him in accordance with the Plea Agreement and then imposed the executed five years as provided therein. *Id.* at 60. No evidence or argument was offered or received. The same day, the trial court issued an order entering judgment of conviction for the two Level 6 felonies and sentencing Mefford to two and one-half years on each, to be served consecutively, for an executed sentence of five years in the DOC. Mefford now appeals.

Discussion & Decision

[17] Mefford does not claim that he was denied due process when the court terminated him from Drug Court or otherwise challenge the court’s decision to terminate him from Drug Court. His argument, rather, is that the trial court improperly determined that it was bound by the Plea Agreement and that, therefore, “a proper sentencing hearing has not been conducted yet.” *Appellant’s Brief* at 10. Mefford asks us to remand for a sentencing hearing at

which the court should “tak[e] into consideration any changed circumstances that may warrant a deviation from the previously-agreed upon five-year fully-executed sentence.” *Id.* at 15. In particular, Mefford argues that the COVID-19 pandemic affected his Drug Court participation and success:

[H]is participation was greatly hampered by the reality of a national pandemic which literally shut down the majority of enterprises in Indiana, including the Jefferson House, where he was supposed to live and continue his drug addiction recovery services. Instead, Mefford had to find other accommodations, likely with or around persons that he had prior relationships with when he was active in his drug addiction. It is not surprising that he failed in his sobriety, and violated other terms of his drug court programming.

Id. at 13.

[18] Mefford suggests that, just as a trial court has broad discretion to revoke probation and impose any portion of a suspended sentence after revocation, the trial court here had – or should have had – discretion regarding what sentence to impose. He maintains that “a defendant revoked from a drug court placement should be sentenced based upon the circumstances at the time of the revocation, not based on what may have been appropriate at a time prior to his attempt at treatment.” *Id.* Mefford’s argument overlooks the terms of the Plea Agreement and the Participation Agreement, as well as relevant statutes.

[19] Unlike probation, which follows conviction and sentencing, the trial court in this case *deferred* entering judgment of conviction, pursuant to I.C. § 33-23-16-14 (Section 14), pending Mefford’s completion of Drug Court. Section 14 provides

that a court, without entering judgment of conviction, may defer proceedings against an individual and place the person in a problem solving court³ program if certain conditions are met. I.C. § 33-23-16-14.5 (Section 14.5) addresses termination from a program and provides, in part:

[I]f the problem solving court judge or hearing officer⁴ finds that an individual participating in a problem solving court program has violated a condition of the program, the problem solving court judge or hearing officer may:

(1) continue the individual's participation in the problem solving court program with or without modifying or expanding the individual's conditions for participating in the problem solving court program; or

(2) terminate the individual's participation in the problem solving court program.

I.C. § 33-23-16-14.5(e). When a person's participation in a program has been terminated as provided under Section 14.5, the problem solving court shall:

(1) enter a judgment of conviction against the individual;

³ Drug courts are considered "problem solving courts" under I.C. § 33-23-16-5.

⁴ A person alleged to have violated the conditions of Drug Court is entitled to a hearing. I.C. § 33-23-16-14.5(c).

(2) refer the individual's case back to the court that referred the case to the problem solving court to allow the referring court to enter a judgment of conviction against the individual; or

(3) otherwise dispose of the case.

I.C. § 33-23-16-14(b).

[20] We agree with the State that, in this case, “the beginning and the end of the trial court’s discretion was its determination as to whether to continue Mefford in the drug court program, to modify the terms of his placement, or to terminate him following his violations.” *Appellee’s Brief* at 17. Here, at the due process hearing – where the issue being decided was whether to terminate Mefford from Drug Court – the trial court observed that it already had imposed a “fairly stiff sanction” in February 2020 when it ordered Mefford to attend inpatient treatment at CRC, and it determined that, despite the pandemic and the disruptions it caused for everyone, Mefford’s various violations warranted termination of his placement in Drug Court. *Transcript Vol. II* at 54. Once the court exercised its discretion to terminate Mefford from Drug Court, the deferral of his conviction was lifted and, pursuant to Section 14(b), entry of judgment of conviction pursuant to the Plea Agreement was triggered.

[21] The Plea Agreement expressly provided that if Mefford “quits, is terminated, or failed to complete” Drug Court, the trial court “shall” enter judgment of conviction and the matter would proceed to a sentencing hearing where Mefford “shall be” sentenced to five years fully executed. *Appellant’s Appendix*

at 39-40. This reflects a fixed plea. *See Rodriguez v. State*, 129 N.E.3d 789, 794 (Ind. 2019) (“fixed plea” is one that specifies the exact number of years to be imposed for sentencing). “When a court accepts a plea agreement that calls for a fixed sentence, it has no discretion to impose anything other than the precise sentence upon which the parties agreed.” *Id.* (quoting *Childress v. State*, 848 N.E.2d 1073, 1078 n.4 (Ind. 2006)).

[22] At the guilty plea hearing, the trial court advised Mefford to consider that, pursuant to the Plea Agreement, if he did not successfully complete Drug Court, “boom, it’s five years, you’re done, it’s over. You don’t get to make any arguments to the Court. You don’t get to ask for lesser time. You do five years.” *Id.* at 23. The court later explained to Mefford that, effectively, he was saying to the court: “I mess up in drug court, no ifs, and buts, its goodbye, I’m gone for five years[,]” and Mefford said he understood that. *Id.* at 23-24. The Participation Agreement likewise provided that, upon violations, the trial court “may terminate” Mefford from Drug Court, and, if terminated, Mefford “will be sentenced . . . pursuant to the terms of the original [P]lea [A]greement.” *Id.* at 43, 51.

[23] We recognize but are not persuaded by Mefford’s policy arguments, including that “plea agreements which bind the trial court, and prevent it from using its sound discretion based upon changing circumstances— such as a global pandemic—rob the trial court [of] the proper discretion to fix a sentence based upon the circumstances at the time of imposition.” *Appellant’s Brief* at 14. The trial court was not robbed of discretion; the trial court was aware of, and indeed

addressed, the unfortunate circumstances of the pandemic when it determined that termination of Mefford's participation in Drug Court was warranted.

[24] Certainly, at the time Mefford executed the Plea Agreement and Participation Agreement, no one anticipated a global pandemic or its unfortunate consequences. But that is not the question before us. The inquiry is whether the trial court had any discretion when sentencing Mefford following his termination from Drug Court. As explained above, it did not.⁵ Accordingly, we affirm the trial court's entry of judgment and conviction and imposition of a five-year executed sentence.

[25] Judgment affirmed.

Bailey, J. and Mathias, J., concur.

⁵ We recognize that in *Holsapple v. State*, 148 N.E.3d 1035 (Ind. Ct. App. 2020), a panel of this court determined that, upon the termination of Holsapple from Drug Court (and later, Mental Health Court), the trial court was not *required* to impose the full sixteen-year executed sentence that was provided for in the plea agreement. *Holsapple* is distinguishable because, in that case, the trial court accepted her guilty plea and then entered judgment of conviction and imposed a sentence, which the court stayed, pending Holsapple's participation in Drug Court and Mental Health Court. That is, unlike Mefford, Holsapple was not participating in Drug Court through a Section 14 deferral and "must have been referred to [Drug Court] as a condition of probation." 148 N.E.3d at 1039. Thus, the *Holsapple* court reviewed the court's revocation and sanction decisions for an abuse of discretion and found that the trial court "erred in determining that it had no discretion to impose any sanction other than full revocation of her *stayed* sentence." *Id.* at 1039-40 (emphasis added). Accordingly, we reversed in part and remanded for the trial court to determine an appropriate sanction, which included but was not limited to ordering the full sixteen-year sentence. Mefford's sentence was not a stayed sentence; it was a conviction and sentence that was deferred while he participated in Drug Court, which would be imposed if he was terminated from the program.