MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Eugene Robinson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 6, 2021

Court of Appeals Case No. 21A-CR-687

Appeal from the Delaware Circuit Court

The Honorable John M. Feick, Judge

Trial Court Cause No. 18C04-1009-FB-21

Crone, Judge.

Case Summary

[1] As part of his guilty plea for class B felony dealing in cocaine, Eugene Robinson was sentenced to a six-year executed term in the Indiana Department of Correction (DOC). However, the sentence was withheld pending his return to Indiana following the completion of a term of incarceration in Arizona. The plea agreement specifically provided that upon Robinson's return to Indiana, he could petition for alternative sentencing and the State "shall not object to the granting of the same." Robinson indeed returned to Indiana and petitioned the trial court for alternative sentencing. During a hearing on the petition, the State objected to Robinson serving any alternative to an executed sentence in the DOC. At the conclusion of the hearing, the trial court denied Robinson's petition and ordered him to serve his previously withheld six-year executed sentence in the DOC but stayed the order pending appeal. We reverse the court's order and remand for a new hearing.

Facts and Procedural History

[2] In September 2010, Robinson was charged with one count of class B felony dealing in cocaine and one count of class D felony maintaining a common nuisance. On October 22, 2014, Robinson entered into a plea agreement with the State wherein he agreed to plead guilty to class B felony dealing in cocaine in exchange for dismissal of the remaining charge. The plea agreement provided for sentencing as follows:

> A. Six (6) years to the Indiana Department of Corrections, executed.

B. Defendant shall pay a Fine of One Dollar ($1.00) Court costs of One Hundred Eighty-one Dollars ($181.00).

C. Upon Defendant's return to the State of Indiana he may Petition for Alternative Sentencing and the State shall not object to the granting of the same.

Appellant's App. Vol. 2 at 16. The trial court held a plea hearing in February 2016, and on August 17, 2016, the court accepted the plea and sentenced Robinson in accordance with the agreement. The trial court's written sentencing order provided in relevant part:

1. Six (6) years, executed to the Indiana Department of Correction, with credit for two (2) actual days (9-20-10 to 9-21-10).

2. Said sentence is withheld pending the Defendant's return to the State of Indiana on the Defendant's own accord at the Defendant's own expense. Upon release from incarceration in the State of Arizona, the Defendant shall return to the State of Indiana within fourteen (14) days and report to the Delaware County Probation Department.

3. Once the Defendant has produced himself to the Probation Department, the Court will set a hearing for alternative sentencing and the State shall not object.

Id. at 19-20.

[3] In February 2021, Robinson was released from his incarceration in Arizona, and he returned to Indiana. Accordingly, Robinson's counsel contacted the

Delaware County Probation Office, which in turn filed a "Request for Hearing on Withheld Sentence." *Id*. at 21-22. The trial court held a hearing on March 24, 2021. During the hearing, Robinson's counsel requested an alternative sentence, such as probation, in lieu of Robinson being sent to the DOC. The State objected and argued that Robinson was bound by the plea agreement to serve a six-year executed sentence in the DOC. The trial court concluded that it was without authority to "modify" Robinson's sentence and ordered him to surrender himself to the DOC. Tr. Vol. 2 at 27. Neither counsel for the State nor Robinson's counsel alerted the trial court to the plea agreement provision stating that Robinson could petition for alternative sentencing, and the trial court could grant that petition, without objection from the State. The court instructed Robinson's counsel to "file something" in order to give the court "some authority that I have to do something … I don't think I have any authority to do it. I mean if you want to file something, that's fine. I'll look at it. If I missed something I'll tell you." *Id*. at 28.

[4] Thereafter, Robinson filed a petition for an alternative sentence as well as a motion for stay of sentence pending a hearing. On April 7, 2021, the trial court held a hearing during which Robinson argued that the plea agreement specifically provided that he could seek alternative sentencing and that the State would not object to the granting of such petition. The State objected to the granting of the petition and argued that the plea agreement simply provided that the State would not object to Robinson filing a petition for alternative sentencing but that the State could "object to the granting of the same." *Id.* at

44. The State further argued that Robinson's sentence "has to be executed" in the DOC pursuant to the plea agreement, and that the trial court had no authority to order any type of alternative. *Id*. At the conclusion of the hearing, the trial court denied Robinson's petition for alternative sentencing but stayed its order pending appeal to this Court.

Discussion and Decision

[5] Robinson contends that the trial court committed reversible error in permitting the State to object to the granting of his petition for alternative sentencing in contravention of the unambiguous terms of the plea agreement. We agree.

[6] It is well settled "that plea agreements are in the nature of contracts entered into between the defendant and the State." *Campbell v. State*, 17 N.E.3d 1021, 1023 (Ind. Ct. App. 2014) (quoting *Lee v. State*, 816 N.E.2d 35, 38 (Ind. 2004)). Both the defendant and the State "bargain for and receive substantial benefits from the agreement." *Id.* (citation omitted). A trial court has the discretion to either accept or reject a proposed plea agreement, and once the trial court has accepted the agreement, "it shall be bound by its terms." Ind. Code § 35-35-3-3(e).

[7] "Because a plea agreement is a contract, the principles of contract law can provide guidance in the consideration of plea agreements." *Griffin v. State*, 756 N.E.2d 572, 574 (Ind. Ct. App. 2001), *trans. denied* (2002). The primary goal in interpreting a plea agreement is to give effect to the parties' intent. *Id*. Terms of the agreement that are clear and unambiguous are conclusive of this intent; as

such, the reviewing court must apply the contractual provisions without construing the agreement or considering extrinsic evidence. *Id.* Terms of an agreement are not ambiguous merely because a controversy exists between the parties concerning the proper interpretation of terms. *Id*. Instead, ambiguity will be found in an agreement only if reasonable people would find the contract subject to more than one construction. *Id*.

[8] Here, the clear and unambiguous language of the written plea agreement provided that rather than simply report to the DOC to serve an executed six-year sentence upon his return to Indiana, Robinson could instead "Petition for Alternative Sentencing" and the State "shall not object to *the granting* of the same." Appellant's App. Vol. 2 at 16 (emphases added). Despite the State's claims to the contrary, reasonable people could not differ on the meaning of the State's promise. Namely, the State essentially agreed that Robinson would be a candidate to serve his sentence outside the DOC, and that the trial court could evaluate a petition seeking such alternative placement on its own merits and grant the petition without any negative interjection by the State. We understand that this was no small promise by the State. However, if the clear language used in the plea agreement "did not accurately reflect the State's intent, then it was the State's obligation to correct the language or not sign the document, as it became binding on all parties as written upon its acceptance by

the court." *Griffin*, 756 N.E.2d at 575 (quoting *Wright v. State*, 700 N.E.2d 1153, 1156 (Ind. Ct. App. 1998)).[1]

[9] The State maintains that, even assuming its objection to the granting of Robinson's petition violated the unambiguous terms of the plea agreement, any resulting error was harmless.[2] We must disagree. Our review of the record reveals that, based upon the State's objection and arguments during the final hearing, the trial court seemed to question not only the meaning of the plea agreement, but also whether the court had the statutory authority to order an alternative to Robinson's commitment to the DOC. Rather than rely on the plain meaning of the language of the plea agreement, the trial court appeared to rely on the State's arguments as well as the language of the written sentencing order, which provided that upon Robinson's return to Indiana "the Court will set a hearing for alternative sentencing and the State shall not object."

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[1] Although we need not reach the issue, we note that when a plea agreement rests in any significant degree on a promise by the prosecutor, so that the promise can be said to be part of the inducement or consideration for the plea, such promise must be fulfilled. *Wright*, 700 N.E.2d at 1155. Otherwise, the defendant's plea is rendered involuntary. *Lineberry v. State*, 747 N.E.2d 1151, 1156 (Ind. Ct. App. 2001).

[2] We find disingenuous the State's position that its mere "involvement" at the hearing did not rise to the level of objecting to the granting of the petition because "[t]he far majority of the State's now challenged comments were merely informational." Appellee's Br. at 17. This is simply not true, not to mention that much of the information the State provided to the trial court was incorrect. An example of just a portion of one of the State's many objections follows:

> [W]e do object to the Court granting any kind of alternative sentencing because that's just not what the plea agreement called for. The plea agreement called for six years to the Indiana Department of Correction. All of that to be executed, which was stayed until he could complete is [sic] Arizona sentence. The charge that he pled to, the sentencing structure at that time is a minimum mandatory. This is the minimum sentence for a Class B Felony. It has to be executed. There is nothing the Court can do. There is nothing [defense counsel] can argue. There is nothing Mr. Robinson can prove through certificates or degrees that is going to change the fact that this sentence has to be executed to the [DOC]. … So, the State asks that you execute the remaining portion of the Defendant's sentence like he agreed upon in the plea agreement[.]

Tr. Vol. 2. at 44.

Appellant's Appendix Vol. 2 at 20. See Tr. Vol. 2 at 39 (trial judge referring to written order and stating, "The State didn't agree to alternate sentencing" but just agreed "to have a hearing, which we are having now."). However, the unambiguous language of the plea agreement controls, and even though the language of the written sentencing order does not go as far as the plea agreement, it does not conflict with the plea agreement.

[10] It is true that at the time Robinson committed his offense, the minimum sentence for a class B felony conviction was six years, which is the executed sentence provided for in the plea agreement. Ind. Code § 35-50-2-5. And, as the State correctly points out, Robinson's minimum executed sentence may not be suspended to probation pursuant to Indiana Code Section 35-50-2-2(b)(1) because Robinson has a prior unrelated felony conviction. Still, this does not mean that the trial court lacks the statutory authority to impose an alternative sentence. Although the trial court does not have the authority to suspend any portion of Robinson's sentence to probation, the trial court does have the authority to order the entirety, or any portion, of Robinson's sentence to be served as a direct placement in community corrections as an alternative to commitment to the DOC. *See* Ind. Code § 35-38-2.6-3.

[11] Based upon the foregoing, we reverse the trial court's order denying Robinson's petition for alternative sentencing and remand for a new hearing. Upon remand, the trial court should consider Robinson's request without objection by the State and make its discretionary decision accordingly. *See Treece v. State*, 10

N.E.3d 52, 56 (Ind. Ct. App. 2014) (placement in community corrections is at sole discretion of trial court), *trans. denied*.

[12] Reversed and remanded.

Bailey, J., and Pyle, J., concur.