

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Loretta Forbes,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

July 28, 2022

Court of Appeals Case No.  
22A-CR-141

Appeal from the Vermillion Circuit  
Court

The Honorable Jill D. Wesch,  
Judge

Trial Court Cause No.  
83C01-2008-F2-6

**Weissmann, Judge.**

[1] Loretta Forbes appeals her sentence for Level 3 felony possession of methamphetamine. Because she waived the right to appeal her sentence in her plea agreement, we affirm. We also refuse to find that the trial court abused its discretion in denying her motion to continue the sentencing hearing.

## Facts

[2] The State charged Forbes with four counts:

- Count I: Level 2 felony dealing in methamphetamine;
- Count II: Level 3 felony possession of methamphetamine;
- Count III: Class A misdemeanor possession of a schedule IV controlled substance; and
- Count IV: Class C misdemeanor possession of paraphernalia.

App. Vol. II, pp. 13-16.

[3] At her final pretrial hearing, Forbes decided to enter into a plea agreement with the State. Tr. Vol. II, p. 71. Pursuant to the written agreement, Forbes pleaded guilty to Count II and waived her right to appeal the judgment and her sentence. In exchange, the State sought to dismiss all other counts. The trial court verbally advised Forbes of her rights, then accepted the agreement and set a date for the sentencing hearing.

[4] After continuing the hearing once because Forbes' attorney was sick, Forbes moved to continue the hearing again in an effort to qualify for community corrections. Tr. Vol. II, p. 82. The trial court denied the motion because Forbes

had a nonextraditable warrant in Illinois that could delay progress in this case. *Id.* at 87. The trial court then sentenced Forbes to six years with three suspended to probation. Forbes now appeals.

## Discussion and Decision

- [5] Forbes challenges both the trial court’s denial of her motion to continue her sentencing hearing and her sentence itself. The State argues that the trial court did not abuse its discretion by refusing to continue the sentencing hearing and Forbes waived any sentencing appeal in her plea agreement. Because we agree with the State, we affirm Forbes’ sentence.

### I. Motion for Continuance

- [6] Forbes argues that the trial court abused its discretion in refusing to continue her sentencing hearing. She believes that with more time, she could have been approved for and sentenced to community corrections, rather than incarcerated in the Department of Correction.
- [7] Because a continuance was not required by statute, we will only reverse the trial court’s ruling on Forbes’ motion to continue if the court abused its discretion. *See Ramirez v. State*, 186 N.E.3d 89, 96 (Ind. 2022). Whether there was an abuse of discretion is potentially a two-step inquiry. *Id.* First, we examine whether the trial court properly considered how the parties’ diverse interests would be impacted by altering the schedule. *Id.* If it did not properly consider the impact, we then consider whether denial of the motion resulted in prejudice. *Id.* “A defendant can establish prejudice by making specific showings as to why

additional time was necessary and how it would have benefitted the defense.”

*Id.*

[8] Here, the trial court carefully considered how Forbes’ proposed continuance would affect the parties. Tr. Vol. II, pp. 81-87. The evidence indicated that Forbes’ admission to community corrections was denied because of an outstanding warrant out of Illinois. Forbes believed that if she had more time, she could have resolved the warrant and the trial court would have levied a different sentence. The trial court nearly granted the continuance but reconsidered after hearing the State’s argument: if Forbes surrendered herself to Illinois authorities, Indiana might be unable to get her back. This, along with the court’s finding that Forbes could have sorted out this problem in the months between the warrant issuing and the sentencing hearing, persuaded the trial court to deny Forbes’ request. *See Gibson v. State*, 43 N.E.3d 231, 236 (affirming denial of continuance where defendant failed to show why previously available time was insufficient). The trial court did not abuse its discretion in denying Forbes’ request for a continuance.

## II. Waiver

[9] Forbes also appeals her sentence, arguing that the trial court abused its discretion, the sentence is inappropriate, and the sentence is not proportional to the nature of the offense. The State argues that Forbes waived appeal of sentencing in the plea agreement. Forbes counters that such waiver was not

knowing, voluntary, or intelligent, and is therefore invalid. We agree with the State.

[10] It is up to the trial court to evaluate the validity of every plea before accepting it. *Davis v. State*, 675 N.E.2d 1097, 1102 (Ind. 1996). The United States Constitution requires that a plea be knowing, voluntary, and intelligent to be valid. See *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008); *Davis*, 675 N.E.2d at 1102 (citing *Boykin v. Alabama*, 395 U.S. 238, 242-44 (1969)). Indiana law also dictates that trial courts shall not accept guilty pleas without first determining that defendants understand the nature of the charges against them, the rights they waive by pleading guilty, and other implications of the plea. *Davis*, 675 N.E.2d at 1102 Ind. Code § 35-35-1-2. “Most waivers are effective when set out in writing and signed.” *Creech*, 887 N.E.2d at 76 (citing *United States v. Wenger*, 58 F.3d 280, 282 (7th Cir. 1995)).

[11] In this case, there is ample indicia that Forbes’ plea was knowing, voluntary, and intelligent. The written plea agreement includes the following language:

Judgment of conviction shall be entered as a Level 4 Felony, lesser included of Possession of Methamphetamine, Level 3 Felony. Defendant shall receive a sentence equal to the advisory sentence for a Level 4 Felony, 6 years. All terms of the sentence shall be left to the discretion of the Court. . . .

App. Vol. II, p. 70. Forbes also initialed a provision that stated, “By his/her signature, the Defendant acknowledges that he/she is waving (sic) his/her right to appeal any sentence imposed by the Court that is within the range of

penalties set forth in this plea agreement.” *Id.* at 71. Before accepting Forbes’ plea, the trial court engaged her in a colloquy about the rights she was waiving by entering into the plea agreement, including her right to appeal. It then sentenced her in accordance with the agreement: six years, with three suspended to probation.

[12] Forbes counters that her waiver was invalid because she cannot read and her attorney’s explanation of the agreement was rushed. To fortify this point, Forbes highlights testimony in which she states, “I don’t understand any of it,” in reference to the plea agreement. Tr. Vol. II, p. 67. This testimony occurred *before* a recess taken for the purpose of explaining the agreement to Forbes. Forbes did not sign the plea until that recess, after which the trial court confirmed that Forbes understood the implications of the agreement, including her right to appeal.

COURT: You understand that if we had a trial and you were found guilty you would have certain appeal rights and by pleading guilty here today you would be giving up those appeal rights?

[FORBES]: Yeah.

COURT: I’m sorry?

[FORBES]: Yes.

*Id.* at 73. Forbes makes no allegation that her attorney’s explanation or the trial court’s colloquy was erroneous, misleading, or inconsistent. Instead, she argues that everything happened too quickly. Forbes has cited no authority—and we

have found none—which dictates that an expeditious waiver is necessarily an invalid one. Because her waiver was not invalid, Forbes cannot now appeal her sentence.

[13] The trial court is affirmed.

Robb, J., and Pyle, J., concur.