

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

Kenneth William Kunkel,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 28, 2022

Court of Appeals Case No.
22A-CR-656

Appeal from the Hamilton
Superior Court

The Honorable Jonathan M.
Brown, Judge

Trial Court Cause No.
29D02-2103-F4-1800

Mathias, Judge.

- [1] Kenneth William Kunkel appeals his sentence following a guilty plea. However, Kunkel waived his right to appeal his sentence as part of his written plea agreement. We therefore dismiss Kunkel’s appeal.

Facts and Procedural History

- [2] In February 2022, Kunkel entered into a written plea agreement with the State in which Kunkel agreed to plead guilty to Level 4 felony unlawful possession of a firearm by a serious violent felon. In exchange, the State agreed to dismiss five other pending charges against Kunkel.
- [3] The written plea agreement provided that the court would enter a sentence of seven years executed with the parties free to argue placement. The plea agreement further provided that Kunkel “hereby waives his right to appeal any discretionary portion of the sentence entered” and also “waives his right to appeal the sentence so long as the Court sentences him within the terms of the plea agreement.” Appellant’s App. Vol. 2, p. 62. The trial court confirmed with Kunkel that his guilty plea and waiver of rights were knowingly and voluntarily entered into by Kunkel. Following a sentencing hearing, the court sentenced Kunkel to seven years executed, with six years in the Department of Correction and one year with Hamilton County Community Corrections. This appeal ensued.

Discussion and Decision

- [4] Kunkel’s only argument on appeal is that his sentence is inappropriate in light of the nature of the offense and his character. However, we agree with the State

that Kunkel has waived his right to appeal his sentence. His written plea agreement expressly provided that he waived his right to appeal the sentence so long as the trial court sentenced him within the terms of the plea agreement, which the court did. And Kunkel does not argue that the terms of his plea agreement should not be enforced. *See, e.g., Creech v. State*, 887 N.E.2d 73, 74-75 (Ind. 2008). Indeed, on appeal he does not acknowledge his written waiver at all. *See Ind. Appellate Rule 46(A)(8)(a)*. We therefore conclude that Kunkel's appeal is not properly before us, and we dismiss his appeal.

[5] Dismissed.

Brown, J., and Molter, J., concur.