MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James Brian Chadwell, II,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 18, 2022

Court of Appeals Case No.
22A-CR-9

Appeal from the
Tippecanoe Superior Court

The Honorable
Steven P. Meyer, Judge

Trial Court Case No.
79D02-2104-F1-10

Friedlander, Senior Judge.

[1] James Brian Chadwell, II, appeals his convictions of child molesting and attempted child molesting, asserting they violate the constitutional prohibition

against double jeopardy. Concluding that Chadwell is not permitted to challenge the propriety of his convictions on direct appeal, we affirm.

[2] In April 2021, Chadwell lured a nine-year-old neighbor into his house. He then prevented her from leaving, hit her, choked her into unconsciousness, and locked her in his basement where he sexually assaulted her. Based on this incident, the State charged Chadwell with attempted murder as a Level 1 felony,[1] child molesting as a Level 1 felony,[2] attempted child molesting as a Level 1 felony,[3] kidnapping as a Level 5 felony,[4] criminal confinement as a Level 3 felony,[5] battery resulting in serious bodily injury as a Level 3 felony,[6] and strangulation as a Level 6 felony.[7] The State also alleged that Chadwell is an habitual offender.[8]

[3] Without a plea agreement, Chadwell pleaded guilty to all charges and admitted to being an habitual offender. At sentencing, the court considered the victim impact statement of the victim's grandmother that as she was searching through

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[1] Ind. Code §§ 35-42-1-1 (2018), 35-41-5-1 (2014).

[2] Ind. Code § 35-42-4-3 (2015).

[3] Ind. Code §§ 35-42-4-3, 35-41-5-1.

[4] Ind. Code § 35-42-3-2 (2019).

[5] Ind. Code § 35-42-3-3 (2019).

[6] Ind. Code § 35-42-2-1 (2020).

[7] Ind. Code § 35-42-2-9 (2020).

[8] Ind. Code § 35-50-2-8 (2017).

the neighborhood for her granddaughter, Chadwell came out of his house and attempted to console her, all the while knowing he had her granddaughter locked in his basement. The court also considered the parties' memoranda concerning whether some of Chadwell's convictions violated his right against double jeopardy. The State conceded that his battery and strangulation convictions should merge into the attempted murder conviction, and the court additionally determined that his kidnapping and criminal confinement convictions also should merge into his attempted murder conviction. Consequently, the court vacated Chadwell's convictions for those four offenses. On the remaining three convictions, the court sentenced Chadwell to forty years for attempted murder, enhanced by twenty years for his status as an habitual offender. The court further ordered concurrent sentences of thirty years each for child molesting and attempted child molesting, to be served consecutively to his enhanced sentence for attempted murder for an aggregate executed sentence of ninety years. Chadwell now appeals.

[4] Chadwell challenges his convictions of child molesting and attempted child molesting as violative of the constitutional prohibition against double jeopardy. In raising this issue, he asserts there is a split of authority in this Court as to whether double jeopardy violations may be raised on direct appeal following a guilty plea. In support of his argument, he cites *McDonald v. State*, 173 N.E.3d 1043 (Ind. Ct. App. 2021), *aff'd in part*, *vacated in part*, 179 N.E.3d 463 (Ind. 2022) and *Snyder v. State*, 176 N.E.3d 995 (Ind. Ct. App. 2021). *See* Appellant's Br. p. 9 n.1.

[5] If any split of authority existed, it was eliminated by the Supreme Court's decision in *McDonald*. On appeal, McDonald challenged his felony convictions on double jeopardy grounds, and this Court held that he could not challenge the validity of his convictions on direct appeal following his guilty plea. *See McDonald*, 173 N.E.3d at 1047. On transfer, the Supreme Court unequivocally reaffirmed the long-standing rule when it stated:

> We summarily affirm the "Double Jeopardy" section of the Court of Appeals opinion, agreeing "[i]t is well-established that a defendant who has pleaded guilty may not challenge the validity of his conviction on direct appeal." 173 N.E.3d at 1047 (citing *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996)).

McDonald v. State, 179 N.E.3d 463, 464 (Ind. 2022); *see also Mapp v. State*, 770 N.E.2d 332 (Ind. 2002) (holding that Mapp waived right to challenge his convictions on double jeopardy grounds when he entered plea agreement).

[6] Furthermore, *Snyder* is clearly distinguishable from the present case. Citing *Tumulty*, the Court first acknowledged the long-standing principle that a conviction based upon a guilty plea may not be challenged by direct appeal. *Snyder*, 176 N.E.3d at 999. The Court then explained the facts that made Snyder's claim distinct from other direct appeal post-guilty plea assertions of double jeopardy violations—the double jeopardy violation claimed by Snyder was conceded by the parties in the trial court. *Id.* In attempting to correct the violation, however, the trial court inadvertently left one of the convictions intact. *See id.* Accordingly, this Court remanded the case to the trial court with

instructions to vacate the problematic conviction in order to correct the error. In doing so, we stated:

> This case does not require us to make a factual determination—the double jeopardy violation was conceded by the parties and determined by the trial court below. The error in Snyder's conviction . . . is therefore unmistakable on the face of the record. We do not read *Tumulty* as requiring us to ignore such errors.

Snyder, 176 N.E.3d at 999.[9]

[7] There being a clear, entrenched rule with no split of authority and no such extenuating circumstances present here as existed in *Snyder*, we conclude Chadwell is not permitted to challenge his convictions on direct appeal, and we affirm the trial court.

[8] Judgment affirmed.

Bradford, C.J., and Molter, J., concur.

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[9] In *Mapp*, the Supreme Court reiterated the long-standing rule that a direct appeal is not the proper procedural avenue for a defendant to attack a plea agreement. 770 N.E.2d at 333 (citing *Tumulty*, 666 N.E.2d at 395). The Court also reviewed the policy reasons for this rule, one of which is that such claims often require a factual inquiry which appellate courts are not equipped to conduct. *Id.* at 334. Further, common challenges to the validity of plea agreements—whether there was an adequate factual basis for the plea; whether the plea was knowing, voluntary, and intelligent; whether the defendant was the victim of ineffective assistance of counsel—almost always require factual determinations. *Id.* Accordingly, the proper avenue for challenging a plea agreement is the filing of a petition for post-conviction relief, thereby triggering a procedure in which the facts can be litigated. *Id.*; *see* Ind. Post-Conviction Rule 1.