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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAMES HARNESS, IV, )

Appellant-Defendant, )

vs. )

No. 15A04-0808-CR-474

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE DEARBORN SUPERIOR COURT

The Honorable G. Michael Witte, Judge

Cause No. 15D01-0804-FB-005

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**April 24, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

James Harness, IV, appeals his sentence following his conviction on a guilty plea for Operating a Vehicle While Intoxicated Causing Death with Prior Operating While Intoxicated Conviction, a Class B felony. Harness presents several issues for our review, but one issue is dispositive, namely, whether he can appeal his sentence on direct appeal.

We affirm.

## FACTS AND PROCEDURAL HISTORY

On June 9, 2008, Harness pleaded guilty to operating a vehicle while intoxicated causing death with prior operating while intoxicated conviction, a Class B felony. In exchange for his plea, the State dismissed several other felony charges related to that offense. The plea agreement stated in relevant part that “the State of Indiana agrees to recommend that the Defendant receive a sentence of 7,300 days (20 years) of which 2,920 days (8 years) shall be suspended.” Appellant’s App. at 154. The trial court accepted the plea following a hearing and sentenced Harness according to the State’s recommended sentence. This appeal ensued.

## DISCUSSION AND DECISION

Harness challenges his sentence on appeal, but a recent opinion by the Indiana Supreme Court, St. Clair v. State, 901 N.E.2d 490 (Ind. 2009), precludes our consideration of the issues he presents.<sup>1</sup> In St. Clair, the defendant’s guilty plea stated in relevant part that “[t]he State will recommend the following sentence: . . . A term of imprisonment of 3 years suspended, except for the following: 180 days[.]” Id. at 491.

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<sup>1</sup> In his brief on appeal, Harness cites to this court’s vacated opinion in St. Clair and notes that our supreme court had granted transfer. The Indiana Supreme Court issued its opinion two weeks after Harness filed his brief.

On appeal, the defendant argued that “‘recommend’ must mean something that is non-binding.” Id. at 493. Thus, the defendant maintained that the trial court had discretion to disregard the State’s recommended sentence.

But our supreme court disagreed. First, the court observed that the defendant did not direct it to any evidence that the parties understood the agreement to be an open plea. Second, the court noted that the plea agreement only used the term “recommend” in the sentencing portion of the agreement. The court stated that “[w]hile it could be more explicit that the court has no discretion to alter the terms of the agreement—only to accept or reject it in its entirety—the normal use of the word ‘recommend’ in Indiana plea bargaining clearly justifies its use here.” Id. at 494.

Here, again, the plea agreement provides that the State “agrees to recommend to the Court that the Defendant receive a sentence of [twenty years] of which [eight years] shall be suspended [to probation].” Appellant’s App. at 154. Harness does not direct us to any evidence in the record showing that the parties intended that the plea agreement would leave sentencing open to the trial court’s discretion. Indeed, during the change of plea hearing, the trial court asked Harness whether he understood the agreement to mean that he would receive a twenty-year sentence with eight years suspended to probation, and Harness answered in the affirmative. And at sentencing, the parties only disputed an appropriate amount of restitution, which the plea agreement had left to the trial court’s discretion. Following the reasoning in St. Clair, which is binding precedent, we hold that Harness’ plea agreement did not leave sentencing open to the trial court’s discretion.

And because the trial court sentenced Harness according to the terms of the plea agreement, Harness cannot challenge his sentence on direct appeal.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.