

Case Summary

Kristofferson Porter appeals his convictions and ninety-year sentence for two counts of Class A felony robbery. We affirm.

Issue

The sole issue we address is whether Porter may challenge either his convictions or sentence on direct appeal.

Facts

On December 4, 2003, the State charged Porter with two counts of felony murder, two counts of Class A felony robbery, one count of Class A felony burglary, and two counts of Class B felony criminal confinement. On January 14, 2005, Porter pled guilty to two counts of Class A felony robbery. Pursuant to the express terms of the plea agreement, the trial court sentenced Porter to forty-five years for each conviction and ordered them served consecutively. The State dismissed the remainder of the charges. Porter now appeals.

Analysis

Porter claims that he was not properly advised of his constitutional rights before pleading guilty, that there was not an adequate factual basis to support his plea, and that he could only be convicted of one count of robbery because the acts constituted a single episode of criminal conduct. Our supreme court has made it quite clear that a defendant cannot, for any reason, challenge on direct appeal a conviction following a guilty plea. Tumulty v. State, 666 N.E.2d 394, 395-96 (Ind. 1996). Instead, a post-conviction relief proceeding is the proper avenue for pursuing claims such as Porter makes. See id. at 396.

Porter also claims the trial court improperly sentenced him to consecutive terms of imprisonment for the two Class A felony robbery convictions. If, after accepting a guilty plea, a trial court has exercised some amount of discretion in sentencing a defendant, he or she may challenge that sentence on direct appeal. See Childress v. State, 848 N.E.2d 1073, 1078 (Ind. 2006). “This is to be distinguished from those cases in which a plea agreement calls for a specific term of years. In such instances, if the trial court accepts the parties’ agreement, it has no discretion to impose anything other than the precise sentence upon which they agreed.” Id. at 1078 n.4. Here, the plea agreement expressly provided that Porter would be sentenced consecutively to two forty-five year terms of imprisonment; the trial court confirmed with Porter that that was his understanding of the agreement before it accepted the plea. The trial court had no discretion to impose any sentence other than the one called for in the plea. See id. Porter cannot now challenge that sentence.¹

Conclusion

Porter’s challenges to his convictions are not properly before us on direct appeal, and the trial court had no discretion to impose any sentence other than the one imposed here. We affirm.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.

¹ We glean, from the tone of his brief, that defense counsel attempted to inform Porter that he could not raise these challenges on direct appeal.