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IN THE
COURT OF APPEALS OF INDIANA

JARED PINE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 12A05-0908-CR-472
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLINTON CIRCUIT COURT
The Honorable Linley E. Pearson, Judge
Cause No. 12C01-0809-FA-244

April 13, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Jared Pine (Pine), appeals his conviction after pleading guilty to: Count I, rape, a Class A felony, Ind. Code § 35-42-4-1(a)(1); Count II, burglary, a Class B felony, I.C. § 35-43-2-1; Count III, criminal confinement, a Class B felony, I.C. § 35-42-3-3(a)(1); Count IV, intimidation, a Class C felony, I.C. § 35-45-2-1(a)(1); Count V, strangulation, a Class D felony, I.C. § 35-42-2-9(b); Count VI, domestic battery, a Class D felony, I.C. § 35-42-2-1.3(a); and an habitual offender enhancement, I.C. § 35-50-2-8.

We affirm.

ISSUE

Pine raises one issue for our review, which we restate as follows: Whether the trial court erred by including a no-contact order as part of Pine's executed sentence.

FACTS AND PROCEDURAL HISTORY

On September 17, 2008, Pine broke into L.B.'s house. At approximately 5:30 p.m., L.B. arrived home and saw evidence that Pine had broken into the house, as he had removed a small window next to the door, which he had done on previous occasions, and was able to reach through to unlock the door on the inside. Pine had left the house by the time L.B. arrived home. L.B. and Pine have two children together.

Later that evening, L.B. started receiving phone calls from Pine; however, she ignored the calls. At around 2:30 a.m., as L.B. walked into her kitchen, Pine suddenly appeared from the utility room located just off the kitchen and grabbed L.B. from behind and began choking her with both hands. L.B. started screaming and struggling with Pine, which eventually woke

up her children. Pine told L.B. to put the children back to bed because he wanted to talk to her. Pine then lead L.B. into the bedroom and told her he wanted to have sex with her. She stated that she did not want to; he responded that she did not have a choice. Ultimately, L.B. relented and had sex with Pine out of concern for her safety, as she was aware that Pine had a knife in his possession.

Later, they moved to the living room where Pine informed L.B. that he had intended to kill her that night but had changed his mind. After the two talked, Pine forced L.B. to have sex once again. He then left the house and L.B. immediately called the police.

On September 18, 2008, the State filed an Information charging Pine with Count I, rape, a Class A felony, I.C. § 35-42-4-1(a)(1); Count II, burglary, a Class B felony, I.C. § 35-43-2-1; Count III, criminal confinement, a Class B felony, I.C. § 35-42-3-3(a)(1); Count IV, intimidation, a Class C felony, I.C. § 35-45-2-1(a)(1); Count V, strangulation, a Class D felony, I.C. § 35-42-2-9(b); and Count VI, domestic battery, a Class D felony, I.C. § 35-42-2-1.3(a). On September 22, 2008, the trial court entered an Order prohibiting Pine from having any direct or indirect contact with L.B. On January 30, 2009, the State filed its Request to File Belated Habitual Offender, which was granted by the trial court on February 2, 2009.

On April 14, 2009, Pine pled guilty to all charges pursuant to a written guilty plea agreement. In the plea agreement, part of the terms of his probation included that Pine "[m]ust have no direct or indirect contact with the victim or her family." (Appellant's App. p. 118). In addition, Pine agreed to "waive[] his[] right to appeal any sentence ordered by the court, including his right to seek appellate review pursuant to Indiana Appellate Rule 7(B)."

(Appellant's App. p. 119). On May 13, 2009, the trial court sentenced Pine to an aggregate sentence of fifty years executed in the Department of Correction followed by one year of probation.

Pine now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Pine is appealing a guilty plea. According to the terms of his guilty plea, Pine waived his right to appeal the sentence pursuant to Indiana Appellate Rule 7(B). Generally, the opportunity for appeal is the prevailing rule. *Creech v. State*, 887 N.E.2d 73, 74 (Ind. 2008). If a defendant's sentence is not fixed by a plea agreement, for example, a defendant "who pleads guilty is entitled to contest on direct appeal the merits of a trial court's sentencing decision." *Id*. (citing *Collins v. State*, 817 N.E.2d 230, 231 (Ind. 2004)). The same is true even when the defendant agrees to a sentencing cap or range. *Id.*

However, in *Creech*, our supreme court addressed whether a defendant can, through a guilty plea agreement, waive his right to appellate review of his sentence. *Id*. The defendant in *Creech* entered into a plea agreement containing a waiver of his right to appeal his sentence. *Id*. at 73. On appeal, our supreme court held that a defendant may waive the right to appellate review of his sentence as part of a written plea agreement. *Id*. at 75. This is so even where the trial court does not specifically advise the defendant that he is waiving the right to appeal his sentence. *See id*. (noting that neither the Indiana Rule of Criminal Procedure nor the Indiana Code requires trial courts to make specific findings regarding the defendant's waiver of his appellate rights). Instead, the "acceptance of the plea agreement

containing the waiver provision is sufficient to indicate that, in the trial court's view, the defendant knowingly and voluntarily agreed to the waiver." *Id*.

Here, it is undisputed that Pine pursuant to term 5 of his plea agreement—"Appeal of Sentence. The defendant waives his/her right to appeal any sentence ordered by the court, including his right to seek appellate review pursuant to Indiana Appellate Rule 7(B)"— Pine waived his right to appeal. (Appellant's App. p. 119).

CONCLUSION

Based on the foregoing, we conclude that pursuant to his plea agreement, Pine has waived his right to appeal.

Affirmed.

VAIDIK, J., and CRONE, J., concur.