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**IN THE
COURT OF APPEALS OF INDIANA**

SAMUEL K. NANCE, JR.,)

Appellant-Defendant,)

vs.)

No. 01A04-0712-CR-751)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ADAMS SUPERIOR COURT

The Honorable James A. Heimann, Judge

Cause No. 01D01-0706-FD-61

July 8, 2008

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Samuel K. Nance, Jr., appeals the two-year sentence the trial court imposed after he pleaded guilty to Theft,¹ a class D felony. Specifically, Nance argues that his sentence is inappropriate in light of the nature of the offense and his character. Finding that Nance has waived the right to appeal his sentence, we affirm.

FACTS

Nance was driving a commercial truck when he and Darlene White stopped at a Wal-Mart in Decatur. Nance removed a portable DVD player from its packaging and gave it to White, who removed it from the store and placed it in Nance's truck. Nance drove the truck to a different side of the store and was apprehended by loss prevention officers upon reentering the store. The stolen DVD player was later found in Nance's truck.

The State charged Nance with class D felony theft on June 13, 2007. On December 18, 2007, Nance entered into a plea agreement whereby he pleaded guilty as charged and the State agreed not to make a specific sentence recommendation. The plea agreement left sentencing to the discretion of the trial court and provided that Nance "is giving up the right to appeal his sentence under Rule 7 of the Indiana Rules of Appellate Procedure and the right to request that the Indiana Court of Appeals and the Indiana Supreme Court revise any sentence imposed by the Court in this cause of action." Appellant's App. p. 12. The trial court accepted Nance's guilty plea and sentenced him to two years imprisonment. Nance now appeals.

¹ Ind. Code § 35-43-4-2.

DISCUSSION AND DECISION

Nance argues that his two-year sentence is inappropriate in light of the nature of the offense and his character. However, as the State notes, Nance waived the right to appeal his sentence by the terms of the plea agreement. During the pendency of this appeal, our Supreme Court decided Creech v. State and held that that “a defendant may waive the right to appellate review of his sentence as part of a written plea agreement.” 35S02-0709-CR-376, ---N.E.2d--- (Ind. May 21, 2008). Thus, Nance has waived the right to appeal his sentence pursuant to the terms of his plea agreement.

Nance contends that he did not knowingly and voluntarily waive his right to appeal his sentence, despite the express language in the written plea agreement that he signed, because the trial court erroneously stated during the plea phase and the sentencing hearing that Nance did have the right to appeal his sentence. The defendant in Creech made a similar argument and our Supreme Court emphasized that “Creech does not argue that he would have withdrawn his guilty plea or taken any different actions in the absence of the judge’s statements.” Slip op. p. 3. Likewise, Nance makes no argument on appeal that he would have withdrawn his guilty plea or taken any different actions without the judge’s statements. Thus, while we take this opportunity to “emphasize the importance of avoiding confusing remarks in a plea colloquy,” id., we conclude that Nance waived his right to appeal his sentence pursuant to the terms of the plea agreement. Thus, we need not address the substance of his appropriateness argument.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.