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**IN THE
COURT OF APPEALS OF INDIANA**

CARL E. YEAGLEY,)
)
Appellant-Defendant,)
)
vs.) No. 08A02-0607-CR-616
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE CARROLL CIRCUIT COURT
The Honorable Jeffrey R. Smith, Judge
Cause No. 08C01-0505-FC-11

December 27, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Carl E. Yeagley appeals his sentences following a guilty plea for operating a motor vehicle after forfeiture of license for life, a Class C felony, operating a vehicle while intoxicated and endangering a person, a Class A misdemeanor, and to being an habitual substance offender. Yeagley raises the issues of whether the trial court properly found and balanced the mitigating and aggravating circumstances, and whether his sentence is inappropriate in light of the nature of the offenses and his character. We affirm without reaching these issues because we hold that Yeagley has waived his right to challenge his sentence on these grounds.

Facts and Procedural History

On May 5, 2005, the State charged Yeagley with operating a motor vehicle after forfeiture of license for life, operating a motor vehicle while intoxicated and endangering a person, and with being an habitual substance offender. On December 16, 2005, Yeagley entered into a plea agreement (the “Agreement”) under which he pled guilty to all three counts. Under the Agreement, Yeagley was to be sentenced to six years for operating after forfeiture for life, one year for operating while intoxicated, and six years for being an habitual substance offender. The sentences were to be served consecutively, for an aggregate sentence of thirteen years, but the executed portion of the sentence was to be capped at ten years. The trial court retained discretion to determine whether the sentence would be served as a community correction sentence and the terms of probation. The Agreement also contained the following clause: “The Defendant agrees that by entering into this plea agreement he is waiving his right to appeal any sentence ordered by the Court.” Appellant’s

Appendix at 20. The trial court accepted the Agreement at a sentencing hearing on February 9, 2006, sentenced Yeagley to the aggregate thirteen years, suspended six years, and placed Yeagley on probation for six years. The trial court noted that Yeagley had eight prior convictions for operating while intoxicated, has repeatedly driven after having his license suspended for life, and testified at the sentencing hearing that subsequent to the commission of the offenses before the court, he had committed another offense of operating after forfeiture for life. On March 10, 2006, the trial court corrected the sentencing order to indicate that Yeagley's driver's license was suspended for life. On April 18, 2006, Yeagley filed a Petition for Permission to File a Belated Notice of Appeal. On May 4, 2006, the trial court entered an Order, nunc pro tunc, identifying the aggravating and mitigating factors discussed at the sentencing hearing, but not included in the original sentencing order.¹ Yeagley now appeals his sentences.

Discussion and Decision

Our courts have long held that plea agreements are in the nature of contracts entered into between the defendant and the State. Lee v. State, 816 N.E.2d 35, 38 (Ind. 2004). If the trial court accepts the plea agreement, its terms bind the trial court, the defendant, and the State. Id. Public policy favors plea agreements, as they significantly expedite the flow of criminal cases, and “[s]trict adherence to the agreement is essential to this purpose.” Schippers v. State, 622 N.E.2d 993, 994 (Ind. Ct. App. 1993).

“Defendants who plead guilty to achieve favorable outcomes in the process of

¹ The original sentencing order indicated that the trial court “considered the plea agreement, the written presentence report, the evidence and argument presented, and the criteria for sentencing as set out in

bargaining give up a plethora of substantive claims and procedural rights.” Games v. State, 743 N.E.2d 1132, 1136 (Ind. 2001). The rights that defendants can waive through a plea agreement include numerous statutory and constitutional guarantees. See id. (defendant waived right to contest conviction on double jeopardy grounds); Williams v. State, 836 N.E.2d 441, 444 (Ind. Ct. App. 2005) (defendant waived 6th Amendment right to have aggravating factors proved beyond a reasonable doubt to a jury); Schippers, 622 N.E.2d at 995 (defendant waived statutory right to seek modification of sentence).

Despite this general freedom of contract, Indiana courts have refused to enforce certain provisions contained in plea agreements. See Lockert v. State, 711 N.E.2d 88, 90 (Ind. Ct. App. 1999) (recognizing that provisions waiving the right to post-conviction relief are void and unenforceable); Sinn v. State, 609 N.E.2d 434, 436 (Ind. Ct. App. 1993), trans. denied, (“[W]e would not enforce a sentence of death for jay walking simply because the sentence was the product of a plea agreement.”). However, plea provisions through which defendants waive their right to appeal a sentence are enforceable. United States v. Lockwood, 416 F.3d 604, 608 (7th Cir. 2005); cf. Hole v. State, 851 N.E.2d 302, 304 (Ind. 2006) (holding that defendants who enter into a plea agreement that leaves the trial court no discretion in sentencing waive their right to have their sentence reviewed under Indiana Appellate Rule 7(B)).

In this case, the Agreement contains an explicit waiver of Yeagley’s right “to appeal any sentence ordered by the Court.” Appellant’s App. at 20. Through this explicit statement in the Agreement, Yeagley has waived both his right to challenge the finding and balancing

of mitigating and aggravating factors and his right to have this court review his sentence under Indiana Appellate Rule 7(B) to determine if his sentence is inappropriate given the nature of the offense and Yeagley's character.²

We note that despite the terms of the plea agreement, Yeagley did not completely waive his right to appeal his sentence. Had the trial court ordered a sentence not authorized by the plea agreement, Yeagley would clearly be allowed to appeal the sentence despite the waiver. Cf. Lee 816 N.E.2d at 38 (noting that when a trial court accepts a plea agreement, the trial court becomes bound by that agreement). However, the sentence ordered by the trial court falls within the parameters of the Agreement. Therefore, Yeagley received the full benefit of the bargained-for Agreement. To permit Yeagley to appeal this sentence would allow him to reap the benefits of the bargain while simultaneously denying the State the full extent of its bargain, thereby undermining the integrity of the Agreement, the certainty that comes with plea agreements, and, ultimately, the public policy of encouraging plea bargaining. The State and the trial court followed the terms of the Agreement. Yeagley must do the same.

Conclusion

We hold that through the explicit provision in the Agreement, Yeagley has waived his right to challenge his sentences on the basis that the trial court abused its discretion in weighing the aggravating and mitigating circumstances and his right to seek appellate review pursuant to Indiana Appellate Rule 7(B).

² Because the sentencing court was bound to impose the precise sentence called for by the plea agreement, the balancing of aggravators and mitigators could impact only the court's decision as to whether

Affirmed.

SULLIVAN, J., and BARNES, J., concur.

the executed sentence should be less than ten years.