



Appellant/Defendant Brandon Sampley appeals from the sentence and fine imposed following his guilty plea to Class D felony Battery by Bodily Waste.<sup>1</sup> We reverse in part and remand.

### **FACTS AND PROCEDURAL HISTORY**

On February 7, 2009, Sampley was asleep in the passenger seat of vehicle when a Dunkirk police officer approached and noticed the odor of alcoholic beverage coming from him. After attempting several times to awaken Sampley, the police officer arrested him for public intoxication. When the police officer attempted to place Sampley into the back seat of his police car, Sampley yelled and cursed at the officer and spat in his face.

On February 17, 2009, the State charged Sampley with Class B misdemeanor public intoxication and Class D felony battery by bodily waste. On June 16, 2009, pursuant to a written plea agreement, Sampley pled guilty to battery by bodily waste. The plea agreement provided, in part, as follows:

Upon Defendant's plea of guilty to Battery by Bodily Waste, a class D Felony sentencing will b[e] litigated to the Court with a maximum executed sentence of 18 months. If the Defendant receives probation and violates probation, he may receive more than an 18 months executed.

....

8. The Defendant waives their right to challenge the trial Court's findings and balancing of mitigating and aggravating factors and further waives their right to have the Court of Appeals review their sentence under Indiana Appellate Rule #7(B).

Appellant's App. pp. 26-27. Also on June 16, 2009, the trial court sentenced Sampley to eighteen months of incarceration and imposed a \$5000 fine.

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<sup>1</sup> Ind. Code § 35-42-2-6(e) (2008).

## DISCUSSION AND DECISION

### I. Whether the Imposition of a Fine Violated the Plea Agreement

Sampley contends that the trial court erred in imposing a fine when the plea agreement did not specifically allow it to do so.

Plea agreements are contractual in nature, binding the defendant, the State, and the trial court. *Pannarale v. State*, 638 N.E.2d 1247, 1248 (Ind. 1994). The trial court may, at its discretion, reject the plea agreement and try the case or consider any new plea agreement the parties negotiate. *Id.* However, once it has accepted a plea agreement recommending a specific sentence, the terms of the agreement constrain the discretion the court would otherwise employ in sentencing. *Id.*; *State ex rel. Goldsmith v. Marion County Superior Court, Criminal Div. No. 1*, 275 Ind. 545, 552, 419 N.E.2d 109, 114 (1981); *Munger v. State*, 420 N.E.2d 1380, 1382 (Ind. Ct. App. 1981).

*Briscoe v. State*, 783 N.E.2d 790, 791-92 (Ind. Ct. App. 2003).

Here, the plea agreement specifies a maximum executed sentence but is silent with respect to any other punitive measures, including fines. Additionally, the agreement does not give the trial court general sentencing discretion with respect to punishment in excess of an executed term. In similar cases, we have held that the imposition of a fine amounts to an abuse of discretion, and we do so here. *See, e.g., id.* at 792; *Gipperich v. State*, 658 N.E.2d 946, 949-50 (Ind. Ct. App. 1995), *trans. denied*. Because the plea agreement gave the trial court neither the specific authority to impose a fine nor the general discretion to impose punishment in excess of an executed term, we conclude that the imposition of a fine was an abuse of discretion.

### II. Whether Sampley's Sentence is Inappropriate

Sampley also contends that the fine imposed on him is inappropriate in light of the nature of his offense and his character, while the State counters that Sampley waived his claim in his plea agreement. Having already concluded that the imposition of the fine was improper, however, we need not address this claim further. We remand for removal of the fine imposed on Sampley and affirm the trial court's judgment in all other respects.

The judgment of the trial court is reversed in part and remanded with instructions.

BAILEY, J., and VAIDIK, J., concur.