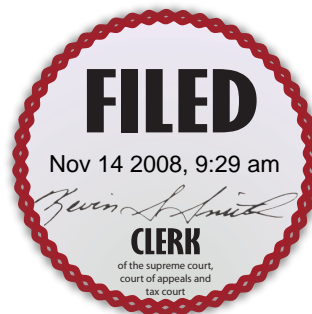


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

GUADALUPE ANGELES,)
)
Appellant-Defendant,)
)
vs.) No. 12A02-0805-CR-431
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE CLINTON CIRCUIT COURT
The Honorable Linley E. Pearson, Judge
Cause No. 12C01-0705-FB-098

November 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After Guadalupe Angeles pled guilty to two counts of Class A felony rape, two counts of Class C felony criminal confinement, one count of Class D felony intimidation, and two counts of Class A misdemeanor battery, the trial court sentenced him pursuant to the terms of a plea agreement to concurrent sentences with an aggregate term of forty years with thirty years executed and ten years suspended to probation. Angeles now appeals, contending that the trial court insufficiently articulated its findings of aggravating circumstances, that the trial court improperly weighed the aggravating and mitigating circumstances, and that his sentence is inappropriate in light of the nature of the offenses and his character. Because Angeles waived his right to appeal his sentence in his plea agreement, his arguments on appeal are waived. We affirm the judgment of the trial court.

Facts and Procedural History¹

On May 2, 2007, twenty-two-year-old Angeles approached sixteen-year-old A.B. as she exited her school bus in Frankfort. Angeles and A.B. had previously been romantically involved, but A.B. no longer desired a relationship with Angeles. Angeles convinced A.B. to get into his car by promising her that they would have a quick dinner at a nearby Long John Silver's and he would return her home shortly.

After dinner, however, Angeles did not take A.B. home. Instead, he drove her to Lebanon and then back to Frankfort. In Frankfort, A.B. spotted her sister in a park and tried to call out to her. However, Angeles prevented her from rolling down the car

¹ We recite the facts as provided by the probable cause affidavit in the record and in the transcript of the guilty plea hearing. Both parties' briefs refer to these materials in their statements of facts.

window, grabbed her, and held her in the car while speeding away. He eventually stopped at a gas station in Michigantown to allow A.B. to use a restroom, but he followed her to ensure that she could not escape. Angeles then drove A.B. to Lafayette and back to Frankfort.

In Frankfort, A.B. tried to escape from the car. However, Angeles grabbed her by her hair and punched her in the head. He took her to his house and to his bedroom. A.B. again tried to escape, but Angeles grabbed her by the throat and threatened to kill her and her sister if she left. Afraid, A.B. stayed at Angeles's house overnight. The next morning, Angeles forced A.B. to submit to intercourse twice.

The State charged Angeles with two counts of Class A felony rape,² two counts of Class C felony criminal confinement,³ one count of Class D felony intimidation,⁴ and two counts of Class A misdemeanor battery.⁵ Angeles pled guilty as charged pursuant to a written plea agreement. The plea agreement left sentencing on each count open to the trial court but provided that the sentences for all counts would run concurrently. Appellee's App. p. 1. The plea agreement also provided in relevant part: "**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)." *Id.* After a sentencing hearing, the trial court identified several aggravating and mitigating circumstances. The court then sentenced Angeles to forty years with thirty

² Ind. Code § 35-42-4-1(b)(1).

³ Ind. Code § 35-42-3-3(b)(1)(B).

⁴ Ind. Code § 35-45-2-1(b)(1)(A).

⁵ Ind. Code § 35-42-2-1(a)(1)(A).

years executed and ten years suspended to probation for each rape conviction, eight years executed for each criminal confinement conviction, three years executed for the intimidation conviction, and one year executed for each battery conviction. Appellant's App. p. 11. The court ordered that all sentences be served concurrently, resulting in an aggregate term of forty years with thirty years executed and ten years suspended to probation. Angeles now appeals.

Discussion and Decision⁶

On appeal, Angeles challenges his sentence. Specifically, he argues that (1) the trial court insufficiently articulated its findings of aggravating circumstances, (2) that the trial court improperly weighed the aggravating and mitigating circumstances,⁷ and (3) that his sentence is inappropriate in light of the nature of the offenses and his character. In response, the State argues that Angeles has waived these challenges because he waived his right to appeal his sentence as a term of his written plea agreement. We agree with the State.

⁶ We note that counsel for Angeles included a copy of the presentence investigation report on white paper in the Appellant's Appendix. See Appellant's App. p. 71-83. We remind counsel that Indiana Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Administrative Rule 9(G)(1)(b)(viii) states that "all pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." The inclusion of the PSI printed on white paper in the Appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part: "Every document filed in a case shall separately identify documents that are excluded from public access pursuant to Admin. R. 9(G)(1) as follows: (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"

⁷ We note that, in light of our Supreme Court's holding in *Anglemyer v. State*, under Indiana's current advisory sentencing scheme a trial court has no obligation to weigh aggravating and mitigating factors against each other when imposing a sentence and cannot be said to have abused its discretion by failing to properly weigh these sentencing considerations. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g on other grounds*, 875 N.E.2d 218 (Ind. 2007).

Our Supreme Court recently held that a defendant may validly waive appellate review of his or her sentence under the terms of a plea agreement. *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008). Here, Angeles waived his right to appeal his sentence in his plea agreement, which provides: “**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).” Appellee’s Br. p. 1. The trial court accepted Angeles’s plea agreement and sentenced Angeles according to its terms. We note that Angeles’s appellate counsel also represented Angeles at his guilty plea hearing and sentencing hearing. The trial court discussed the waiver provision during both hearings. Tr. p. 3 (“[T]here will not be any appeal of the . . . sentence.”), 29 (“[H]e’s waiving his rights to appeal so, anything I do, I have to be sure on what I do – was it in the law.”). However, Angeles’s appellate brief does not even acknowledge the waiver provision of his plea agreement, let alone argue that it is in some way unenforceable. Angeles’s challenges to his sentence are waived.

The judgment of the trial court is affirmed.

KIRSCH, J., and CRONE, J., concur.