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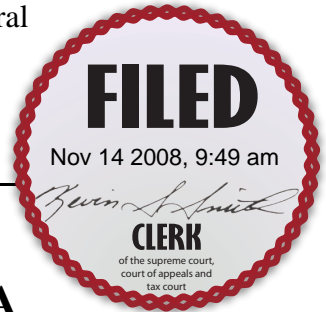
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**IN THE  
COURT OF APPEALS OF INDIANA**

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TONY L. CAMPBELL, JR.,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 27A05-0808-CR-465

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APPEAL FROM THE GRANT SUPERIOR COURT  
The Honorable Jeffrey D. Todd, Judge  
Cause No. 27D01-0605-FA-107

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**November 14, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

Tony L. Campbell, Jr., appeals his sentence for class B felony dealing in cocaine following his guilty plea. We address the following dispositive issue: whether Campbell waived the right to appeal his sentence. We dismiss.

On March 15, 2006, Campbell sold 10.2 grams of cocaine to an undercover police officer. On June 6, 2006, the State charged Campbell with class A felony dealing in cocaine. On April 2, 2007, the parties entered into a plea agreement in which Campbell agreed to perform two controlled purchases of cocaine each from five different sources for the Joint Effort Against Narcotics Team Drug Task Force (“the JEAN Team”), plead guilty to class D felony possession of cocaine, and serve a three-year sentence, with the executed portion to be time served and the remainder suspended. Appellant’s App. at 23; State’s Ex. 1. The same day, Campbell pled guilty pursuant to the plea agreement and the trial court continued sentencing and released Campbell to fulfill his obligation with the JEAN Team.

Campbell failed to carryout his obligation pursuant to the plea agreement. In addition, he was arrested for operating a vehicle while intoxicated. For these reasons, on January 14, 2008, the trial court vacated the guilty plea. On March 17, 2008, the parties entered into a second plea agreement, in which Campbell agreed to plead guilty to class B felony dealing in cocaine and sentencing was left to the trial court’s discretion. The plea agreement also contained the following provision:

That the Defendant acknowledges that his execution of this agreement evidences the fact that he is knowingly, intelligently, and voluntarily waiving his right to challenge the sentence imposed by the Court, that is within the range set forth in this plea agreement, on the basis that such sentence is erroneous. The Defendant further agrees that by his execution of this agreement he is waiving his rights to challenge the Court’s findings and balancing of mitigating and aggravating factors as well as his right to have the

Court of Appeals review the sentence imposed herein under Indiana Appellate Rule 7(B).

Appellant's App. at 35. On the same day, Campbell pled guilty pursuant to this agreement. On April 21, 2008, the trial court sentenced Campbell to eighteen year's imprisonment, with three years suspended to probation. At the conclusion of the sentencing hearing, the trial court began to advise Campbell of his appellate rights. The State pointed out that Campbell had waived the right to appeal his sentence. The trial court responded,

Well, I did not notify the defendant of that at the time he pled guilty because it was on page 3 where it's usually just an advisement of rights. Whenever that paragraph has been in plea agreements in the past, it's been in the body of the plea agreement, and I have advised the defendant on the record, and have him acknowledge that. Well, I guess I'm slightly concerned about that. However, Mr. Campbell did sign page 3 under the "Acceptance of Plea Agreement." And I know I asked him at the guilty plea hearing if that was, in fact, his signature, and if he read the plea agreement and understood it before he entered his plea of guilty, and he did say, "yes." I guess that eliminates his right to appeal the Court's sentence under FA-107[.]

Tr. at 49-50. Campbell did not make any objections.

On appeal, Campbell asserts that his sentence is inappropriate. The State argues that Campbell has waived the right to appeal his sentence. Campbell has not filed a reply brief. An appellant's failure to respond to an issue in a reply brief is analogous to an appellee's failure to file a brief or to respond to an issue. *See Cox v. State*, 780 N.E.2d 1150, 1162 (Ind. Ct. App. 2002) (noting that appellee's failure to respond to issue is akin to failure to file a brief). In such situations, we review that claim for prima facie error. *Id.* "Prima facie means at first sight, on first appearance, or on the face of it." *Id.*

"Indiana courts have long held that plea agreements are in the nature of contracts entered into between the defendant and the state." *Perez v. State*, 866 N.E.2d 817, 819 (Ind.

Ct. App. 2007). “A plea agreement is contractual in nature, binding the defendant, the state and the trial court. The prosecutor and the defendant are the contracting parties, and the trial court[']s role with respect to their agreement is described by statute: If the court accepts a plea agreement, it shall be bound by its terms.” *Id.* at 820 (quoting *Lee v. State*, 816 N.E.2d 35, 38 (Ind. 2004)). “More to the point, it is well established that a defendant’s appeal waiver is enforceable if made knowingly and voluntarily.” *Id.* at 819 (quoting *United States v. Lockwood*, 416 F.3d 604, 608 (7th Cir. 2005)).

In *Perez*, the defendant “agreed both in the written plea agreement and in his colloquy with the court that he was waiving his right to a direct appeal of his sentence as long as it was within the parameters of thirty to fifty years.” *Id.* Therefore, the *Perez* court concluded that the provision waiving Perez’s right to directly appeal his sentence was valid. *Id.*

Here, Campbell’s plea agreement contained a waiver of the right to appeal his sentence. At the sentencing hearing, the trial court noted that it had questioned Campbell as to whether he had read and understood the plea agreement and whether the signature on the plea agreement was his, and Campbell had answered affirmatively. Campbell did not object to the trial court’s characterization of the colloquy at the guilty plea hearing or to the trial’s court’s conclusion that he had waived his right to appeal his sentence. In short, there is nothing in the record before us that suggests that Campbell’s waiver was not knowing, voluntary, and intelligent. *Cf. Creech v. State*, 887 N.E.2d 73 (Ind. 2008) (concluding that trial court’s incorrect advisement at the conclusion of defendant’s sentencing hearing has no effect on an otherwise knowing, voluntary, and intelligent waiver of the right to appeal his sentence); *Brattain v. State*, 891 N.E.2d 1055 (Ind. Ct. App. 2008) (holding that trial court is

not required to make an express finding regarding defendant's intention to waive appellate rights and that appointment of appellate counsel following plea did not invalidate waiver). Consequently, we dismiss Campbell's appeal.

Dismissed.

KIRSCH, J., and VAIDIK, J., concur