

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE  
**Court of Appeals of Indiana**

Daniel Scott Burton II,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*



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March 19, 2024

Court of Appeals Case No.  
23A-CR-1606

Appeal from the Bartholomew Superior Court

The Honorable James D. Worton, Judge

Trial Court Cause Nos.  
03D01-2302-F6-586  
03D01-2302-CM-789

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**Memorandum Decision by Judge Weissmann**  
Judges Mathias and Tavitas concur.

**Weissmann, Judge.**

- [1] Daniel Scott Burton II appeals his nearly three-year aggregate sentence for domestic battery, a Level 6 felony, and resisting law enforcement, a Class A misdemeanor. Burton, however, does not contest that he waived his right to appeal in the plea agreement under which he pleaded guilty to those offenses. We therefore dismiss.

**Facts**

- [2] In exchange for the State’s dismissal of related charges, Burton pleaded guilty to the domestic battery and resisting law enforcement counts under a plea agreement that provided:

I acknowledge that I may have the right to challenge this agreement and the resulting conviction and sentence. By entering into this plea agreement[,] I hereby waive any right to appeal the conviction and/or sentence in this cause by direct appeal so long as the Judge sentences me within the terms of my plea agreement.

App. Vol. II, p. 92.

- [3] The terms of the plea agreement capped the executed portion of Burton’s sentence for domestic battery at two years and restricted his contact with the victim for the duration. The agreement otherwise left sentencing terms to the trial court’s discretion. The trial court approved the agreement, accepted Burton’s guilty plea, and sentenced him to concurrent terms of two years

imprisonment for domestic battery and 206 days imprisonment for resisting law enforcement.

- [4] Burton appealed, claiming only that his nearly three-year aggregate sentence was inappropriate under Indiana Appellate Rule 7(B) in light of the nature of the offense and the character of the offender. The State cross-appealed, claiming that Burton had waived his right to appeal his sentence. Burton did not respond to the State’s waiver claim.

## **Decision and Discussion**

- [5] A defendant may waive the right to appellate review of the defendant’s sentence as part of a written plea agreement. *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008). “Acceptance of the plea agreement containing the waiver provision is sufficient to indicate that . . . the defendant knowingly and voluntarily agreed to the waiver.” *Id.* at 77.

- [6] Burton does not contest the State’s claim that he waived his appeal. Nor do we see anything in the waiver provision or the record in general that suggests waiver did not occur. Accordingly, Burton was not entitled to appeal his sentence.

- [7] We dismiss.

Mathias, J., and Tavitas, J., concur.

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