

Case Summary

Michael Garnett (“Garnett”) received permission to file a belated appeal. He challenges his 2006 sentence, asserting that the facts established during his guilty plea hearing did not support his adjudication as a habitual offender. The State cross-appeals, arguing that the trial court lacked authority to grant permission to file a belated appeal, as the plea agreement provided for a fixed sentence. Concluding that the jurisdictional issue is dispositive, we do not reach the issue posed by Garnett. We dismiss the appeal.

Facts and Procedural History

In 2005, the State charged Garnett with Unlawful Possession of a Firearm by a Serious Violent Felon, a Class B felony,¹ and two other charges. Also, it sought to have him adjudicated a habitual offender.²

In 2006, Garnett entered a plea agreement with the State, pled guilty to the Class B felony, and admitted he was a habitual offender.³ The trial court sentenced him to a term of sixteen years – six years for the Class B felony conviction, enhanced by ten years for the habitual offender adjudication. Upon the trial court’s inquiry, defense counsel acknowledged that the plea agreement proposed precisely the minimum sentence allowed by statute.⁴

Court: If the Court is reading the plea correctly, Ms. DeVane, this is for the minimum time that the defendant could receive if convicted on Count One, and then a Habitual?

¹ Ind. Code § 35-47-4-5.

² Ind. Code § 35-50-2-8.

³ The State dismissed the other two charges.

⁴ Six years is the minimum sentence for a Class B felony. Ind. Code § 35-50-2-5. Ten years is the minimum habitual-offender enhancement for a Class B felony. Ind. Code §§ 35-50-2-5 and -8(h).

Defense: That is correct, Judge.

Tr. at 4. Garnett also acknowledged that his sentence was non-suspendible.

Two years later, the trial court granted Garnett's request to file a belated appeal.

Discussion and Decision

Garnett seeks to challenge the sentence imposed as a result of his plea. However, the plea agreement provided specifically for a sixteen-year term of imprisonment.

Last year, our Supreme Court considered a similar situation in Sholes v. State, 878 N.E.2d 1232 (Ind. 2008). Sholes pled guilty and, pursuant to his plea agreement, was sentenced to life imprisonment without parole. The Sholes Court dismissed the appeal, concluding that Sholes was not an "eligible defendant" for purposes of Indiana Post-Conviction Rule 2. Id. at 1238. It reasoned that, under Rule 2, he did not have the right to challenge his sentence on direct appeal as his plea agreement included a specific sentence. Id. at 1235 (citing Hole v. State, 851 N.E.2d 302, 303 (Ind. 2006)).

Garnett's plea agreement provided specifically for a sixteen-year term of imprisonment. As in Sholes, Garnett's plea to a fixed sentence precluded him from challenging his sentence on direct appeal.

Dismissed.

MATHIAS, J., and BARNES, J., concur.