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.

FILED
Oct 11 2011, 9:19 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

JILL M. ACKLIN
Westfield, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KATHERINE MODESITT COOPER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

PHILIP D. KRANTZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 57A03-1104-CR-146
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE NOBLE CIRCUIT COURT
The Honorable G. David Laur, Judge
Cause No. 57C01-0912-FB-56

October 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Philip Krantz appeals his twelve-year sentence for four Class D felonies resulting from a plea agreement. He contends that his convictions arose out of an episode of criminal conduct and therefore, under Indiana Code section 35-50-1-2(c), his sentence cannot exceed four years, the advisory sentence for a Class C felony. We disagree. Krantz cannot accept a plea bargain containing what would otherwise be an illegal sentence and then argue that the agreement cannot be enforced. By accepting a plea bargain that benefits him, he gives up his right to contest the legality of his sentence under Section 35-50-1-2(c). We therefore affirm.

Facts and Procedural History

On December 28, 2009, Krantz was driving through Noble County when an Indiana State Police Officer pulled him over for a traffic stop. The officer learned that Krantz's license was suspended. He followed Krantz to his car at which time he smelled marijuana. The officer conducted an inventory search of Krantz's automobile and discovered two pounds of marijuana, lysergic acid diethylamide (LSD) and methamphetamine, as well as numerous precursors, chemical reagents, and paraphernalia used to produce methamphetamine. There were also two reaction vessels found, at least one of which held an active chemical reaction associated with the production of methamphetamine.

The State charged Krantz with Class B felony manufacturing methamphetamine, Class D felony maintaining a common nuisance, Class D felony possession of marijuana, Class D felony possession of methamphetamine, Class D felony possession of a

controlled substance, and Class A misdemeanor driving while suspended. Krantz entered into a plea agreement with the State in which he pled guilty to all four Class D felonies in return for dismissal of the Class B felony and Class A misdemeanor. The plea agreement provided that Krantz's sentences would "all be served consecutive to one another, 3 years will be entered on each count, with no more than 18 months of each count to be served. The suspended portion of the sentence shall be served on probation. All other terms left to court's discretion." Appellant's App. p. 35.

The trial court sentenced Krantz according to the plea agreement, with four consecutive sentences of three years with eighteen months of each sentence executed. *Id.* at 40. At the end of the sentencing hearing, Krantz informed the trial court that he had no desire to appeal his sentence.

Krantz now appeals his sentence.

Discussion and Decision

Krantz contends that his twelve-year sentence is illegal pursuant to Indiana Code section 35-50-1-2(c) because his convictions arose out of a single episode of criminal conduct. Accordingly, he claims his sentence should not have exceeded four years, the advisory sentence for a Class C felony.

Section 35-50-1-2(c) provides, in relevant part:

> except for crimes of violence, the total of the consecutive terms of imprisonment . . . to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

While it is true that Krantz's convictions arose out of a single episode of criminal conduct, the advisory sentence for a Class C felony, which is one class of felony higher than the offenses of which Krantz was convicted, does not govern his sentence. This is so because he chose to accept a plea agreement from the State, from which he substantially benefitted.

When a defendant enters into a beneficial plea agreement that results in what would otherwise be an illegal sentence, it is well settled that he cannot use that illegality to then challenge the validity of his sentence. *Stites v. State*, 829 N.E.2d 527 (Ind. 2005). Defendants who benefit from a plea agreement "give up a plethora of substantive claims and procedural rights, such as challenges to convictions that would otherwise constitute double jeopardy. Striking a favorable bargain including a consecutive sentence the court might otherwise not have the ability to impose falls within this category." *Davis v. State*, 771 N.E.2d 647, 649 n.4 (Ind. 2002) (quotation omitted).

This proposition has generally been applied to sentences later challenged on double jeopardy grounds and to consecutive sentences where the trial court did not have authority to enter them at the time. *See, e.g.*, *Lee v. State*, 816 N.E.2d 35, 37 (Ind. 2004); *Games v. State*, 743 N.E.2d 1132 (Ind. 2001); *Lutes v. State*, 401 N.E.2d 671 (Ind. 1980). However, this proposition equally applies here where the sentences are challenged on the grounds of Section 35-50-1-2(c) and the defendant similarly acquires a substantial benefit through the plea agreement. Thus, when a plea agreement is reached for felony convictions arising out of an episode of criminal conduct and the length of imprisonment exceeds the advisory sentence for the class of felony that is one class higher, the

defendant waives his right to challenge his sentence. After all, it was the defendant's choice to accept the agreement and receive what he perceived to be a beneficial sentence, therefore he cannot later attempt to attack its legality on the ground that it is greater than a sentence permitted under Section 35-50-1-2(c).

Further, it is noteworthy that Krantz makes no claim that his guilty plea was entered into unknowingly, unintentionally, or involuntarily. Nor does he claim that his counsel was incompetent. In fact, the evidence against Krantz was overwhelming on all charges, including the Class B felony manufacturing methamphetamine, which was dismissed. A duffle bag in Krantz's car contained "numerous precursors, chemical reagents, and paraphernalia associated with the illegal production of methamphetamine. . . . Also located within the duffle bag were two reaction vessels . . . at least one of the reaction vessels contained an active chemical reaction associated with the illegal production of methamphetamine." Appellant's App. p. 13-14. Additionally, while in custody, Krantz admitted that he was experimenting with manufacturing methamphetamine. *Id.* at 14. As a result, by agreeing to plead guilty to four charges in exchange for the State dismissing two other charges, including most notably the Class B felony, Krantz reduced his potential sentence by up to twenty years.

Krantz substantially benefitted from this voluntary plea agreement that he reached with the State. As a result, he has lost the ability to challenge his sentence on the grounds of Section 35-50-1-2(c). We therefore affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.