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ATTORNEY FOR APPELLANT:

SCOTT A. SMITH
Warsaw, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERRELLS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

WILLIAM GREENWOOD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 43A03-1005-CR-322
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE KOSCIUSKO CIRCUIT COURT
The Honorable Rex L. Reed, Judge
Cause No. 43C01-0907-FA-158

October 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

William Greenwood appeals his sentence, following his guilty plea, for class C felony child molesting and class C felony child exploitation.

We affirm but remand for correction of clerical errors.

ISSUE

Whether Greenwood's sentence is inappropriate.

FACTS[1]

On July 11, 2009, H.R., who was then ten years old, spent the night at the house of her friend, who was the daughter of Greenwood. H.R. was unable to sleep and went into the living room to watch television. Greenwood was also in the living room. H.R. eventually fell asleep on the sofa. She later woke up when Greenwood uncovered her and pulled her to a sitting position. Greenwood pulled the straps of H.R.'s top off her shoulders and exposed her breasts. He then used his cell phone to take a photograph of her breasts. Next, Greenwood laid H.R. down on the sofa, pulled down her pajama bottoms, and took a photograph of her genital area with his cell phone. Greenwood then pulled his pants down, exposed his penis, and straddled H.R. on the sofa. Greenwood placed his penis on H.R.'s genital area and took another photograph with his cell phone. Thereafter, Greenwood touched H.R.'s genital area with his fingers. Greenwood then went to his computer and exhibited photographs of "minor-age[d] girls in a state of

[1] Greenwood did not request a transcription of the guilty plea hearing; therefore, the facts of his crimes come from the probable cause affidavit included in his Appellant's Appendix rather than the factual basis as set forth in his guilty plea hearing.

nudity posed in sexually explicit positions." (App. 25). H.R. told Greenwood that she felt dizzy, and she returned to the bedroom.

On July 30, 2009, the State charged Greenwood with: Count I, child molesting as a class A felony; Count II, child molesting as a class C felony; and Count III, child exploitation, a class C felony. On March 25, 2010, Greenwood entered into a plea agreement, wherein he agreed to plead guilty to Counts II and III in return for the State's dismissal of Count I. The plea agreement left Greenwood's sentence open to the discretion of the trial court but required that the sentences imposed for Counts II and III be run concurrently. Additionally, Greenwood's plea agreement contained a provision specifically waiving his right to appeal his sentence. That provision provided, in relevant part:

> The Defendant understands that he has certain rights arising under the Constitution of the United States and of the State of Indiana, and further acknowledges that he understands that he has and by pleading guilty is waiving, each of the several rights by placing his initials next to each right described as follows:
>
> * * * * *
>
> [ ] Defendant waives the right to appeal the sentence[.]

(App. 29).[2] Greenwood initialed this waiver provision, and he and his attorney signed the plea agreement.

At the sentencing hearing, the trial court accepted Greenwood's plea agreement, sentenced him to eight years on each count, ordered the sentences to run concurrently, and ordered that four years be suspended to probation. Following the imposition of

[2] Surprisingly, neither Greenwood's brief nor the State's brief mentions or acknowledges this provision of Greenwood's plea agreement.

Greenwood's sentence, the trial court did not inform Greenwood that he had a right to appeal his sentence.

DECISION

Greenwood argues that his sentence of eight years executed, with four years suspended, for the commission of two class C felonies is inappropriate. Greenwood, however, has waived his right to appeal the appropriateness of his sentence.

Our Indiana Supreme Court has held that "a defendant may waive the right to appellate review of his sentence as part of a written plea agreement." *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008). Additionally, the Supreme Court explained that "[a]cceptance of the plea agreement containing the waiver provision is sufficient to indicate that, in the trial court's view, the defendant knowingly and voluntarily agreed to the waiver." *Id.* at 77.

Here, Greenwood entered into a plea agreement and pled guilty to two of the three counts to which he was charged. Under the terms of Greenwood's plea agreement, he specifically agreed to "waive[] the right to appeal the sentence[.]" (App. 29). Because his plea agreement contains an express waiver of his right to appeal his sentence, we affirm. *See Creech*, 887 N.E.2d at 75-77; *Akens v. State*, 929 N.E.2d 265, 267 (Ind. Ct. App. 2010) (affirming defendant's sentence for child molesting where his plea agreement contained a provision waiving the right to appeal his sentence).[3]

[3] Although we affirm the sentence, we remand to the trial court to correct some inconsistencies or clerical errors noted in the trial court's sentencing order. In *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007), our Indiana Supreme Court explained that when dealing with a discrepancy between an oral and written sentencing statement, a reviewing court will review both the written and oral sentencing statements to discern the findings of the trial court. The reviewing court has the option of crediting the statement that

Affirmed but remanded for correction of clerical errors.

BRADFORD, J., and BROWN, J., concur.

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accurately pronounces the sentence or remanding to the trial court for resentencing. *Id.* (citing *Willey v. State*, 712 N.E.2d 434, 446 n.8 (Ind. 1999) (affirming the sentence but remanding for the correction of clerical errors contained in the Abstract of Judgment and Sentencing Order)).

Here, during the sentencing hearing, the trial court ordered Greenwood to serve the maximum term of eight years for each of his class C felony convictions. However, the trial court's sentencing order contains an internal inconsistency in that paragraphs one and two provide that Greenwood was sentenced to eight years for each of his class C felony convictions but paragraph four provides that "the advisory sentence is imposed for a Class C felony and which is also in conformity with the Plea Agreement." (App. 33). There is an additional inconsistency between the trial court's sentencing order and the oral sentencing statement regarding the suspended portion of Greenwood's sentence. At the sentencing hearing, the trial court ordered that four years of Greenwood's sentence be suspended to probation. The trial court's sentencing order, however, provides that four years of Greenwood's sentence be suspended "pending the good behavior of the defendant" and that he "be placed on probation during the term of imprisonment[.]" *Id.* We conclude that the oral statement is the accurate pronouncement of the sentence, and we remand to the trial court to correct the clerical errors contained in the written sentencing order so that the order is consistent with the trial judge's oral pronouncement. *See, e.g.*, *Willey*, 712 N.E.2d at 446.