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**IN THE
COURT OF APPEALS OF INDIANA**

TERRY COOLEY,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 35A04-0706-CR-296

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Jeffrey R. Heffelfinger, Judge
Cause No. 35D01-0612-FA-289

August 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Terry Cooley appeals his thirty-five-year sentence, imposed after he pleaded guilty to Class A felony Dealing in Methamphetamine within 1000 feet of school property,¹ Class C felony Illegal Drug Lab,² and Class D felony Theft.³ We affirm.

Issue

Cooley presents two issues, one of which is dispositive: whether his waiver of the right to appellate review of his sentence is enforceable.

Facts and Procedural History

Cooley pleaded guilty to dealing in methamphetamine, illegal drug lab, and theft. In exchange, the State dismissed charges of possession of methamphetamine and possession of marijuana and, further, agreed not to seek a habitual offender enhancement. Under the plea agreement, Cooley would receive a sentence between thirty and forty years for dealing in methamphetamine, and all sentences would run concurrently. Paragraph 17 of the plea agreement reads: “I understand that I have a right to appeal my sentence and I hereby waive my right to appeal my sentence.” (App. 22.)

At the guilty plea hearing on February 6, 2007, the trial court referred to Paragraph 17 and asked Cooley if he understood that he was “giving up” his right to appeal the sentence if the court sentenced him according to the terms of the plea agreement. (Tr. 23.) Cooley answered in the affirmative. That same day, Cooley signed a separate Written Advisement

¹ The charging instrument and abstract of judgment list the relevant statute as Indiana Code Section 35-48-4-6.1, but that statute describes possession of methamphetamine. Indiana Code Section 35-48-4-1.1 addresses dealing in methamphetamine.

² Ind. Code § 35-48-4-14.5.

and Waiver of Rights form stating that he understood he was waiving his right to appeal his sentence. The court accepted the plea agreement and, on March 13, 2007, imposed a thirty-five-year sentence for dealing methamphetamine, with concurrent sentences of four years for illegal drug lab and one and one-half years for theft. Cooley now appeals.

Discussion and Decision

Cooley seeks review of his thirty-five-year sentence under Indiana Appellate Rule 7(B), claiming that his sentence is inappropriate in light of the nature of the offenses and his character. He acknowledges that he expressly waived the right to appeal his sentence in the plea agreement, but he argues that the provision should be held void and unenforceable because it undermines this Court's constitutional authority to review sentences, eliminates any avenue for review of his sentence, and permits the State to exercise its superior bargaining power. In essence, Cooley contends that the provision is void and unenforceable as a matter of law.

This Court recently decided the issue presented, specifically holding that a defendant may waive his right to a direct appeal of his sentence in a plea agreement. Perez v. State, 866 N.E.2d 817, 820 (Ind. Ct. App. 2007), trans. denied.⁴ In Perez, the agreement included a provision that the sentencing range would be not less than thirty nor more than fifty years and expressly stated that the defendant waived his right to appeal that sentence. The defendant acknowledged the waiver in open court. The trial court accepted a plea agreement and

³ Ind. Code § 35-43-4-2.

⁴ We commend counsel for Appellant for citing contrary authority decided less than two weeks before the Appellant's brief was filed. See Ind. Professional Conduct Rule 3.3(a)(2). When the State filed its brief, a petition to transfer was pending in Perez. By a unanimous vote, that petition was denied on July 25, 2007.

imposed a forty-seven-year sentence. Id. at 818.

On appeal, as here, the defendant argued that his waiver was void and unenforceable. Id. at 819. The Perez court recited the “long held” principle that plea agreements are in the nature of contracts entered into between the defendant and the State. Id. The Court also noted that, although no Indiana case had so held, the Seventh Circuit Court of Appeals has routinely ruled that ““a defendant’s appeal waiver [in a plea agreement] is enforceable if made knowingly and voluntarily.”” Id. (quoting United States v. Lockwood, 416 F.3d 604, 608 (7th Cir. 2005)). Because the defendant had 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 a sentence within the given range, the Court concluded that the defendant’s waiver was valid. Id. at 820.

Here, Cooley also stated both in the written plea agreement and at the guilty plea hearing that he understood he was waiving his right to appeal his sentence. In addition, he acknowledged that he was waiving that right by signing a Written Advisement and Waiver of Rights form. Cooley received the full benefit of the agreement for which he bargained. He cannot now be heard to complain that his waiver is unenforceable. Because Cooley has waived his right to sentence review, we affirm his sentence.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.