



Andrew Patterson (“Patterson”) pleaded guilty in St. Joseph Superior Court to multiple charges of Class C felony robbery and Class D felony theft, admitted being an habitual offender, and admitted violating the terms of his probation. Patterson appeals and presents three issues, which we reorder and restate as: (1) whether Patterson’s guilty plea was made knowingly, voluntarily, and intelligently; (2) whether the trial court erred in denying Patterson’s request to return the bond he had previously posted; and (3) whether Patterson’s sentence was inappropriate. Concluding that none of these issues is properly before us, we dismiss.

### **Facts and Procedural History**

From 2006 to 2008, Patterson was charged with thirteen felonies in four separate causes. On January 13, 2006, the State charged Patterson with Class D felony auto theft and Class D felony theft in Cause No. 71D03-0601-FD-41 (“Cause No. FD-41”). Patterson pleaded guilty to the auto theft charge, and the theft charge was dismissed. The trial court sentenced Patterson in Cause No. FD-41 to three years, with credit for time served and the remainder suspended to probation.<sup>1</sup> On March 15, 2007, the State charged Patterson with Class D felony theft in Cause No. 71D03-0703-FD-277 (“Cause No. FD-277”). Patterson pleaded guilty to this charge, and was sentenced on July 19, 2007 to three years, suspended to probation.<sup>2</sup> On January 5, 2008, the State charged Patterson with Class B felony robbery, five counts of Class C felony robbery, and two counts of Class D felony auto theft, all stemming from a crime spree in which Patterson and an

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<sup>1</sup> The State filed a petition to revoke Patterson’s probation in Cause No. FD-41 on December 4, 2007.

<sup>2</sup> The State filed a petition to revoke Patterson’s probation in Cause No. FD-277 on February 4, 2008.

accomplice robbed several stores in a short period of time, in Cause No. 71D03-0801-FB-2 (“Cause No. FB-2”). On July 10, 2009, the State charged Patterson with Class C felony robbery and also alleged that Patterson was an habitual offender in Cause No. 71D08-0907-FC-173 (“Cause No. FC-173”).

On August 26, 2009, the trial court ordered Patterson held without bond in Cause No. FB-2 but “released” him on his own recognizance on the other pending cases. On October 1, 2009, the trial court held a hearing at which Patterson requested that the trial court return the money he had posted as bond so that he could hire private counsel. The trial court denied this request and retained the bond. A public defender was appointed to represent Patterson.

On April 21, 2010, Patterson entered into an open plea agreement with the State which covered all four cases against him. In Cause No. FD-41 and Cause No. FD-277, Patterson’s probation was revoked. In Cause No. FB-2 and Cause No. FC173, Patterson agreed to plead to a total of seven counts of Class C felony robbery and two counts of Class D felony auto theft. Patterson also admitted that he was an habitual offender. The plea agreement also contained the following provision:

I understand that I have a right to appeal my sentence if there is an open plea. An open plea is an agreement which leaves my sentence to the Judge’s discretion. *I hereby waive my right to appeal my sentence under Creech v. State, 887 N.E.2d 73 (Ind. 2008), so long as the Judge sentences me within the terms of my plea agreement.*

Appellant’s App. p. 35 (emphasis added). On July 20, 2010, the trial court accepted the plea agreement and sentenced Patterson to an aggregate term of sixty-eight years.

Patterson filed a motion to correct error on August 19, 2010, which the trial court denied on August 27, 2010. Patterson now appeals.

### **Discussion and Decision**

On appeal, Patterson first claims that his plea was not knowingly, intelligently, and voluntarily made. It is well settled, however, that a defendant who pleads guilty may not challenge his conviction, including the validity of his plea, on direct appeal. Jones v. State, 675 N.E.2d 1084, 1089 (Ind. 1996) (citing Tumulty v. State, 666 N.E.2d 394, 395 (Ind. 1996)); see also Mapp v. State, 770 N.E.2d 332, 333-34 (Ind. 2002). Instead, such challenges must be brought by filing a petition for post-conviction relief. Jones, 675 N.E.2d at 1089; Tumulty, 666 N.E.2d at 396. Therefore, Patterson may not now properly challenge the validity of his plea.

Patterson also claims that the trial court erred in denying his request for the return of his bond money so that he could hire private counsel. But because Patterson pleaded guilty, he may not challenge rulings leading to his conviction on direct appeal, including the trial court's rulings on pre-trial motions. See Alvey v. State, 911 N.E.2d 1248, 1250-51 (Ind. 2009) (concluding that defendant who pleaded guilty could not challenge trial court's ruling on pre-trial motion to suppress on direct appeal even though defendant specifically reserved right to appeal the ruling in plea agreement); Holsclaw v. State, 907 N.E.2d 1086, 1087-88 (Ind. Ct. App. 2009) (rejecting defendant's challenge to trial court's denial of pre-trial motion to dismiss because defendant gave up right to challenge his conviction by pleading guilty).

Patterson also claims that the sentence imposed by the trial court was inappropriate. Generally, a defendant who pleads guilty pursuant to an open plea agreement may challenge the trial court's sentencing decision on direct appeal. Tumulty, 666 N.E.2d at 396; see also Childress v. State, 848 N.E.2d 1073 (Ind. 2006). Here, however, Patterson's plea agreement contained a provision that explicitly waived his right to challenge his sentence on appeal, so long as the trial court sentenced him within the terms of the plea agreement. This waiver provision cited Creech v. State, 887 N.E.2d 73 (Ind. 2008).

In Creech, our supreme court held that a defendant may waive the right to appellate review of his sentence as part of a written plea agreement. Id. at 75. The waiver provision in Creech's plea agreement was similar to the one at issue here:

I understand that I have a right to appeal my sentence if there is an open plea. An open plea is an agreement which leaves my sentence to the Judge's discretion. *I hereby waive my right to appeal my sentence so long as the Judge sentences me within the terms of my plea agreement.*

Id. at 74 (emphasis added). The Creech court noted that such waivers are effective when the plea agreement was signed. See id. at 76 (citing United States v. Wenger, 58 F.3d 280, 282 (7th Cir. 1995)). The court also held that Creech's waiver was valid even though the trial court erroneously informed him at sentencing that he did have the right to appeal his sentence. Id. 76-77.

Here, Patterson signed a plea agreement which clearly and explicitly stated that he was giving up his right to appeal his sentence. The waiver provision even cited Creech, which should have given clear notice to Patterson and his counsel that such waivers are

valid even when the trial court erroneously informs the defendant otherwise. And here, there is no indication that the trial court did misinform Patterson with regard to the waiver of his right to appeal his sentence. Patterson's waiver of his right to appeal his sentence was valid. Because there is no allegation that Patterson's sentence was outside the terms of the plea agreement, he may not now challenge the trial court's sentencing decision.

### **Conclusion**

Patterson may not challenge on direct appeal the validity of his guilty plea or the trial court's ruling on Patterson's pre-trial motion. The only issue available on direct appeal following a guilty plea is the propriety of the sentence imposed, but Patterson's plea agreement contains an explicit waiver of his right to challenge his sentence on appeal. Because none of the issues Patterson presents are properly before us, we dismiss this appeal.

Dismissed.

KIRSCH, J., and VAIDIK, J., concur.