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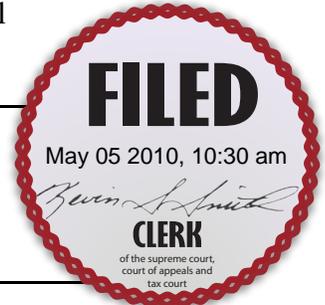
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**IN THE
COURT OF APPEALS OF INDIANA**



DENNIS ALONZO BEECHING,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 35A05-0910-CR-579

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Jeffrey R. Heffelfinger, Judge
Cause No. 35D01-0412-FD-296

May 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Dennis Alonzo Beeching appeals his sentence, pursuant to a guilty plea, for class D felony non-support of a dependent.

We affirm.

ISSUE

Whether Beeching has waived his right to appeal his sentence.

FACTS

Between August of 2001 and October of 2004, Beeching failed to pay child support for his daughter, B.H. On October 28, 2004,¹ the State charged him with class D felony non-support of a dependent child. On December 3, 2004, the Huntington Superior Court issued a bench warrant for his arrest.

On July 21, 2009, Beeching was extradited from Alaska to Indiana to face the charge of non-support of a dependent. The State served its warrant on Beeching on July 29, 2009. On August 11, 2009, Beeching, by counsel, filed a motion to enter a plea of guilty as charged. His plea agreement contained an express waiver of his right to appeal his sentence. Further, it provided, in part, as follows:

In exchange for my plea of guilty, the State will agree to a sentence of one and one-half (1 ½) years, all suspended except for 90 days. I will be on probation, during which time I will make all of my support payments, plus any amount on the arrearage. I will be employed within 30 days of being released from incarceration and I will have an income withholding order placed on my wages. If I successfully complete probation, including

¹ As of October 28, 2004, he owed an arrearage of \$10,378.51.

making all of my support payments, my conviction will be entered as an A misdemeanor.

(App. 24). On September 15, 2009, the trial court sentenced Beeching to three years of probation.

On September 30, 2009, Beeching filed a notice of appeal. On October 23, 2009, he filed a petition for a writ of mandamus, wherein he argued that the trial court had abused its sentencing discretion by ordering, as a condition of probation, that he remain in Indiana while on probation. On November 3, 2009, our Supreme Court dismissed Beeching's petition for a writ of mandamus. In the meantime, on December 8, 2009, the State filed a petition to revoke Beeching's probation for failure to make child support payments pursuant to the terms of his court-ordered probation.

DECISION

In challenging the propriety of his sentence, Beeching acknowledges that he may have "waived his right to appeal the terms of his sentence," but argues that any such waiver should not preclude this Court from finding that his sentence was contrary to the terms of the plea agreement. Beeching's Br. at 5. Specifically, he argues that the trial court "materially added to his punishment" by ordering him to remain in Indiana as a condition of probation. *Id.* We are not persuaded.

Although an individual who pleads guilty is generally not permitted to challenge his conviction on direct appeal, he is entitled to contest the merits of his sentence where the trial court has exercised discretion at sentencing. *Holsclaw v. State*, 907 N.E.2d 1086,

1087 (Ind. Ct. App. 2009) (citing *Collins v. State*, 817 N.E.2d 230, 231 (Ind. 2004)). However, our Supreme Court has held that a defendant may waive the right to appellate review of his or her sentence as part of a written plea agreement. *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008).

Here, Beeching's motion to enter a plea of guilty provided, "I understand that I have a right to appeal my sentence, and I hereby waive my right to appeal my sentence." (App. 26). In addition, he signed the Written Advisement and Waiver of Rights, which contained the following provision: "You understand you have a right to appeal your sentence and you hereby waive your right to appeal your sentence." (App. 30). In light of the foregoing, we agree with the State that he expressly waived his right to appeal his sentence. However, waiver notwithstanding, and for purposes of judicial economy, we will proceed to resolve this matter on the merits.

The requirement ordering Beeching to remain in Indiana was merely a permissible administrative or ministerial condition of probation and did not materially add to Beeching's punitive obligation. Indiana Code section 35-38-2-2.3(a) lists twenty obligations that a trial court may impose on a defendant as conditions of probation, including subsection (a)(11), which provides that the trial court may require a person, as a condition of probation, to "[r]emain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer."

Here, Beeching was residing in Alaska in 2009. Although he had paid child support for a while, it is undisputed that he was a fugitive from Indiana for non-payment

of child support with a significant arrearage. In his brief, Beeching acknowledges that this requirement “appears to be a standard condition for probationers out of Huntington County.” Beeching’s Br. at 12. The record reveals that the trial court -- in apparent recognition of the practical difficulties involved in monitoring Beeching’s conduct remotely -- decided against placing him on informal probation.

In *Freije v. State*, 709 N.E.2d 323, 325 (Ind. 1999), our Supreme Court held that

[r]egardless of the language of a plea agreement, trial courts are free to impose administrative or ministerial conditions “such as reporting to the probation department, notifying the probation officer concerning changes in address or place of employment, supporting dependents, remaining within the jurisdiction of the court, [and] purs[u]ing a course of vocational training[.]” Many of these are listed as “standard conditions” of probation in the standard Marion County order of probation and as “conditions of probation” in the standard probation order in Hendricks County, where [the *Freije*] case arose. These standard conditions are customarily imposed on probationers, and a defendant who enters into a plea agreement that calls for a probationary sentence should reasonably expect that the county’s standard conditions may apply.

709 N.E.2d at 325 (emphasis added).

The *Freije* court distinguished the standard condition requiring that the probationer remain in Indiana from “special” or “additional” conditions like home detention or community service requirements, which do “materially add to the punitive obligation.” *Id.* The Court found that imposition of such “special” or “additional” conditions is improper absent a plea agreement provision granting the trial court the discretion to impose such conditions. *Id.*

Unlike *Freije*, the instant case does not involve the imposition of a special or additional condition of probation that materially adds to Beeching’s punitive obligation. Here, numbered paragraph three of the standard Huntington County probation order, which was signed by Beeching, lists the requirement that the probationer “not leave the State of Indiana without the permission of the Court” among the fixed or standard² conditions of probation therein. (App. 14). In light of our Supreme Court’s holding in *Freije*, we find that Beeching reasonably should have expected the county’s standard conditions to apply, and that this requirement did not materially add to his punitive obligation. We find no abuse of discretion.

Affirmed.³

BAKER, J., and CRONE, J., concur.

² In *Freije*, our Supreme Court observed that “[u]nlike the standard conditions that are merely numbered, the ‘special’ or ‘additional’ conditions of probation must be checked off by the judge.” *Freije*, 709 N.E.2d at 325. The Huntington County standard probation order is consistent with this format: the customarily-imposed standard conditions are numbered paragraphs (1) through (6), and (16), while the special or additional conditions addressing such matters as home detention, restitution, community service, and course requirements in paragraphs (7) through (15) “must be checked off by the judge.” *Id.*

³ The State also argues that Beeching is not entitled to relief because the trial court “exceeded its statutory authority by unilaterally modifying [Beeching]’s plea agreement to allow him to appeal despite the unambiguous waiver of that right as a term of the agreement.” State’s Br. at 3-4. Having already found that Beeching is not entitled to relief, we decline to address this issue.