



Appellant-defendant Johnny Byers appeals following his conviction for Attempted Murder,<sup>1</sup> a class A felony. Specifically, Byers argues that the trial court erred by concluding that, pursuant to Indiana Code section 35-50-2-2, it could suspend only the portion of his sentence that exceeded the minimum twenty-year term for a class A felony. Finding no error, we affirm the judgment of the trial court.

### FACTS

Sometime in October 2008, Byers shot a man in the back following a fight. On October 30, 2008, the State charged Byers with attempted murder, a class A felony. Following a jury trial that commenced on August 25, 2009, Byers was found guilty as charged.

During the October 1, 2009, sentencing hearing, Byers requested that the trial court either sentence him to a term below the minimum twenty-year term or suspend the majority of his sentence. The trial court determined that pursuant to Indiana Code section 35-50-2-2, the minimum executed sentence that it could impose is twenty years. The trial court sentenced Byers to thirty years with ten years suspended for a total executed term of twenty years imprisonment. Byers now appeals.

### DISCUSSION AND DECISION

Byers's sole argument on appeal is that the trial court erred when it concluded that pursuant to Indiana Code section 35-50-2-2, it could suspend only the part of his sentence that exceeded the minimum sentence for a class A felony, which is twenty years. Indiana Code section 35-50-2-2(b)(4) lists the offenses for which the trial court can suspend only

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<sup>1</sup> Ind. Code § 35-41-5-1; Ind. Code § 35-42-1-1.

the portion of a sentence that exceeds the minimum sentence. Byers argues that, although murder is included, attempted murder is not and that, consequently, the trial court could have suspended the majority of his thirty-year sentence.

Our Supreme Court rejected the same argument in Haggenjos v. State, 441 N.E. 2d 430, 434 (Ind. 1982), and held that “when Ind. Code [section] 35-50-2-2 speaks of Murder, it also refers to Attempted Murder.” Accordingly, Byers’s argument must fail.

Nevertheless, Byers asserts that our Supreme Court’s more recent decisions indicate a shift away from its holding in Haggenjos. However, the decisions to which Byers directs this court are distinguishable, inasmuch as they involved different statutes. See Ellis v. State, 736 N.E.2d 731, 737 (Ind. 2000) (holding that attempted murder is not a crime of violence pursuant to Indiana Code section 35-50-1-2); Greer v. State, 684 N.E.2d 1140, 1142 n.7 (Ind. 1997) (rejecting the State’s argument that murder for purposes of Indiana Code section 35-50-1-2 includes attempted murder); State ex rel. Camden v. Gibson Circuit Court, 640 N.E.2d 696, 701 (Ind. 1994) (concluding that Indiana Code section 31-6-2-1.1 did not exclude attempted robbery from a juvenile court’s jurisdiction even though the statute excluded robbery while armed with a deadly weapon). Accordingly, Haggenjos remains our Supreme Court’s interpretation of Indiana Code section 35-50-2-2, and the trial court did not err when it determined that it could suspend only the portion of Byers’s sentence that exceeded twenty years. See Strong v. State, 903 N.E.2d 164, 166 (Ind. Ct. App. 2009) (recognizing that Haggenjos “still stands as the Court’s interpretation of Ind. Code § 35-50-2-2” and declining to apply Camden or Greer), trans. denied.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.