

In the
Indiana Supreme Court

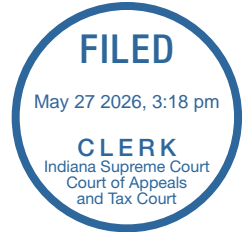
Devin Powell,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
25A-CR-00447

Trial Court Case No.
49D27-2207-MR-18032



Published Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 5/27/2026.

FOR THE COURT

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush

Chief Justice of Indiana

Massa, Slaughter, and Molter, JJ., concur.

Rush, C.J., concurs in the denial of transfer with separate opinion in which Goff, J., joins.

Rush, C.J., respecting the denial of transfer.

This opinion is one of two issued today addressing a recurring problem: defendants waive their appellate rights as part of a written plea agreement but later receive inaccurate advisements suggesting those rights remain available. Here, the trial court and prosecutor both told Devin Powell that he had a “right to appeal the sentence” even though the court had imposed a sentence within the terms of his plea agreement, bringing any sentencing challenge within the agreement’s appeal-waiver provision. Although the Court of Appeals properly followed precedent in concluding that the prosecutor’s remark did not amount “to a modification or abandonment of the waiver provision in the plea agreement,” *Powell v. State*, No. 25A-CR-447, at *6 (Ind. Ct. App. Jan. 30, 2026) (mem.), I write to emphasize that our courts and attorneys must take greater care in ensuring defendants receive accurate advisements and in preserving confidence in the reliability and finality of plea agreements.

Pratcher provides the necessary guidance for cases in which a plea agreement leaves sentencing discretion to the trial court and includes a waiver of the defendant’s right to appeal their sentence. *Pratcher v. State*, 273 N.E.3d 824, 825 (Ind. 2026) (Rush, C.J., respecting denial of transfer) (Massa, Slaughter, Goff, and Molter, JJ., joining). The trial judge should explain the defendant’s ordinary right to appeal, the waiver’s effect, and any claims that remain available. *Id.* And if the judge makes any inaccurate or confusing statements, counsel for both sides should respectfully speak up to correct the misstatement, not reinforce it. *Id.* When this process breaks down, the entire system bears the cost: public defenders pursue claims foreclosed by appeal waivers, deputy attorneys general move to dismiss those claims, and judicial officers consider filings the waiver was intended to prevent. Such avoidable litigation undermines the certainty plea agreements are meant to provide and consumes the limited resources they are meant to conserve.

Goff, J., joins.