



APPELLANT PRO SE

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IN THE
COURT OF APPEALS OF INDIANA

Ernest J. Mance,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 17, 2021

Court of Appeals Case No.
20A-CR-1702

Appeal from the Lake Superior
Court

The Honorable Natalie Bokota,
Magistrate

Trial Court Cause No.
45G02-0304-MR-6

May, Judge.

[1] Ernest J. Mance appeals the denial of his petition for modification of sentence.

We affirm.

Facts and Procedural History

- [2] On April 16, 2003, the State charged Mance with two counts of murder based on an incident during which Mance chased down two victims and shot one six times and the other nine times. After a jury trial, on October 19, 2004, the trial court found Mance guilty as charged. On December 1, 2004, the trial court sentenced Mance to two 60-year sentences to be served consecutive to one another for an aggregate sentence of 120 years. Mance appealed his convictions and sentence, and this court affirmed the decisions of the trial court. *Mance v. State*, No. 45A03-0501-CR-6 (Ind. Ct. App. October 4, 2005).
- [3] In August 2006, Mance filed a pro se petition for post-conviction relief alleging ineffective assistance of trial counsel. He amended his petition in July 2007. The post-conviction court held a hearing on Mance’s petition in September 2007 and denied his petition in May 2008. Mance appealed the denial of his petition for post-conviction relief and a discovery decision made by the post-conviction court, and we affirmed the decisions of the post-conviction court. *Mance v. State*, No. 45A04-0806-PC-369 (Ind. Ct. App. January 14, 2009), *trans. denied*.
- [4] On August 12, 2020, Mance filed a petition for modification of sentence, asking the trial court to order his sentences to run concurrently, for an aggregate sentence of sixty years. In his petition he noted that he had obtained certain educational achievements and “maintained meaningful employment . . . in the wire shop, print shop and . . . the sewing shop” while incarcerated. (App. Vol.

II at 17.) In addition, Mance indicated he had not been subject to discipline while incarcerated and his crime was of a nature that was “unlikely to recur.”

(*Id.* at 18.) Finally, Mance stated:

5. That pursuant to I.C. 35-38-1-17(k), before a Petitioner with a crime involving violence can file a sentence modification he or she must get the prosecutor’s consent.

6. On the 25th day of June, 2020, Petitioner sent a correspondence to his prosecuting attorney, who prosecuted the case against him, Ms. Mary Ryan.

7. Petitioner asked Ms. Ryan did she have any objections to him filing a sentence modification, informed her that if she did not respond within 30 days, that Petitioner would take this as the State consent to his request for a sentence modification. Moreover, that the State has no objection.

* * * * *

10. To the date of this motion, the prosecution still haven’t responded, which is evidence that State consent and have no objection to Mance’s request.

(*Id.* at 19-20) (errors in original) (formatting omitted). On August 13, 2020, the trial court denied Mance’s petition without a hearing, and stated in its order:

The Defendant files pro se Petition for Modification of Sentence. On October 21, 2004, the Defendant was convicted of murder. Therefore, pursuant to Ind. Code 35-38-1-17, he is a violent criminal and must obtain the consent of the Prosecuting Attorney in order to file a request for modification. The Defendant indicates that he mailed a letter to the Deputy Prosecuting

Attorney who tried the case but has received no response. He interprets the State’s silence as consent. This court does not. The motion is summarily denied pursuant to the cited statute.

(*Id.* at 10.)

Discussion and Decision

[5] Generally, we review denial of a motion to modify a sentence for an abuse of discretion. *Schmitt v. State*, 108 N.E.3d 423, 425 (Ind. Ct. App. 2018). Indiana Code section 35-38-1-17 governs the reduction or suspension of a sentence for a person who committed a crime or was sentenced prior to July 1, 2014. Ind. Code § 35-38-1-17(a). Pursuant to Indiana Code section 35-38-1-17(k):

A convicted person who is a violent criminal may, not later than three hundred sixty-five (365) days from the date of sentencing, file one (1) petition for sentence modification under this section without the consent of the prosecuting attorney. After the elapse of the three hundred sixty-five (365) day period, a violent criminal may not file a petition for sentence modification without the consent of the prosecuting attorney.

A person who commits murder is a “violent criminal.” Ind. Code § 35-38-1-17(d)(1). Mance argues the trial court abused its discretion when it denied his petition for modification of sentence because the prosecutor’s silence indicated her consent to the modification as required by Indiana Code section 35-38-1-17(k). In addition, Mance contends the trial court abused its discretion when it did not notify the prosecutor of his petition, did not order the Department of Correction to prepare a progress report, and did not hold a hearing.

[6] In support of his argument, Mance cites *State v. Harper*, 8 N.E.3d 694 (Ind. 2014). In that case, Harper, who was incarcerated for six years for Class D felony residential entry, Class D felony theft, and a habitual offender finding,¹ filed a petition for modification of sentence. Under the version of Indiana Code section 35-38-1-17 applicable at the time of Harper’s petition, the trial court could reduce or suspend her sentence only “subject to the approval of the prosecuting attorney.” Ind. Code § 35-38-1-17(b) (2008).

[7] The trial court held a hearing on Harper’s petition at which the deputy prosecutor, Harper, and her counsel were present. The trial court noted its lack of authority under Indiana Code section 35-38-1-17(b) (2008) “but indicated its desire to [reduce Harper’s sentence] unless the prosecutor’s office objected[.]” *Harper*, 8 N.E.3d at 695. The trial court directed the deputy prosecutor present at the hearing to “think about that and talk about it with somebody else” and the deputy prosecutor “responded in the affirmative.” *Id.* at 696. The trial court directed the deputy prosecutor to contact the court “[s]ometime in the next week or so” with the State’s decision. *Id.* The prosecutor’s office did not respond further, and approximately thirty days later, the trial court granted Harper’s petition and ordered her to spend the remainder of her sentence on probation. *Id.*

¹ Harper’s specific convictions were listed in *State v. Harper*, 79A02-1303-CR-272, slip op. at *1 (Ind. Ct. App. December 30, 2013), *trans. granted, opinion vacated by State v. Harper*, 8 N.E.3d 694 (Ind. 2014).

[8] On appeal, the State argued the trial court abused its discretion when it modified Harper’s sentence because the “prosecutor did not affirmatively approve the modification.” *Id.* at 697. Our Court rejected the argument, holding that, “in the context of the interactions and communications between the trial court and the prosecutor in this case,” the prosecutor’s lack of response to the trial court’s intent to grant Harper’s petition for modification of sentence “satisfied the ‘approval’ requirement of the statute.” *Id.*

[9] However, contrary to Mance’s assertion, *Harper* does not apply to the facts before us. Mance did not present evidence that the prosecutor’s office received Mance’s letter requesting its consent. Further, Mance has not cited case law to support his contention that the prosecutor’s lack of response to his letter constituted the prosecutor’s consent. Finally, the interactions between the trial court and the prosecutor’s office in *Harper* are not the equivalent of those occurring here.

[10] Additionally, unlike the trial court in *Harper*, the trial court here did not indicate its intention to modify Mance’s sentence. Thus, the trial court was not required to take further action – including notifying the prosecutor, ordering the Department of Correction to prepare the requisite reports, or holding a hearing. *See Robinett v. State*, 798 N.E.2d 537, 539 (Ind. Ct. App. 2003) (trial court not required to hold a hearing or give notice to prosecutor if it does not intend to modify the sentence), *trans. denied*; *see also Schmitt*, 108 NE.3d at 427 (applying *Robinett* to statutory amendments and holding without a preliminary determination to grant sentence modification, trial court is not required to hold

a hearing or order Department of Correction to file a progress report). We therefore conclude the trial court did not abuse its discretion when it denied Mance's petition for modification of his sentence. *See Barber v. State*, 122 N.E.3d 809, 811 (Ind. 2019) (trial court did not abuse its discretion it when it denied Barber's motion to modify sentence under Indiana Code section 35-38-1-17(k) because he filed his petition more than 365 days after he was sentenced and the prosecutor did not consent to the modification).

Conclusion

[11] The trial court did not abuse its discretion when it denied Mance's petition to modify his sentence. Accordingly, we affirm the trial court.

[12] Affirmed.

Kirsch, J., and Bradford, C.J., concur.