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IN THE COURT OF APPEALS OF INDIANA

Joseph L. Wilson,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

June 2, 2022

Court of Appeals Case No. 21A-CR-2308

Appeal from the Jay Circuit Court

The Honorable Brian D. Hutchison, Judge

Trial Court Cause No. 38C01-1712-F5-45

May, Judge.

[1] Joseph L. Wilson appeals the trial court's denial of his motion to modify sentence. He argues the trial court erred as a matter of law when it determined

it did not have authority to convert Wilson's time on parole to time on probation. We affirm.

Facts and Procedural History

[1] On December 19, 2017, the State charged Wilson with Level 5 felony incest[1] and Class A misdemeanor invasion of privacy[2] for alleged crimes in which his daughter was the victim. On August 16, 2018, Wilson pled guilty to Level 5 felony incest and the State dismissed the invasion of privacy count. The trial court sentenced Wilson to four years incarcerated.

[2] On December 30, 2020, Wilson completed his sentence and was placed on parole. On September 20, 2021, Wilson filed a motion to modify sentence in which he argued "it would be in the best interest of [Wilson] if his sentence were modified and he were released from parole and would service [sic] the remainder of his sentence on supervised probation." (App. Vol. II at 57.) Wilson asserted the modification should be granted

> so that the Court can fashion appropriate restrictions on [Wilson's] interactions with his own family as opposed to parole officials including where and with whom [Wilson] may reside. Specifically, parole and program officials are requesting [Wilson] incur substantial financial hardship by moving out [of] a

[1] Ind. Code § 35-46-1-3(a).

[2] Ind. Code § 35-46-1-15.1(a).

> previously approved home in which other relatives[3] are voluntarily residing with him.

(*Id*. at 57-8.)

[3] On September 30, 2021, the trial court held a hearing. At the end of the hearing, the trial court stated: "Okay. Well at this [unreadable] I don't think I have the authority. You could take 10 days to teach me otherwise if you'd like. If I do [unreadable] the authority I don't know. I don't know." (Tr. Vol. II at 13.) Wilson filed his post-hearing memorandum in support of sentence modification on October 12, 2021. On October 21, 2021, the trial court denied his motion for modification of sentence in an order that explained: "Insomuch as this Court did not suspend any portion of the sentence imposed (which would have allowed for probation), and that the Court knows of no lawful mechanism whereby probation can be imposed after service of a fully executed sentence, the Court finds that the relief sought is not available to [Wilson]." (App. Vol. II at 62.)

Discussion and Decision

[4] We generally review a trial court's decision on a motion for sentence modification for an abuse of discretion. *Johnson v. State*, 36 N.E.3d 1130, 1133 (Ind. Ct. App. 2015), *trans. denied*. However, when, as it does here, the matter

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[3] The relatives referenced here are Wilson's mother and Wilson's youngest daughter, who was not the victim of Wilson's crime.

turns on a question of statutory interpretation, we employ a de novo standard of review. *Allen v. State*, 159 N.E.3d 580, 583 (Ind. 2020). Regarding our standard of review when interpreting statutes, our Indiana Supreme Court recently explained:

> When interpreting a statute, "our primary goal is to determine and give effect to the intent of the legislature." *Daniels v. FanDuel, Inc.*, 109 N.E.3d 390, 394 (Ind. 2018) (citing *Moryl v. Ransone*, 4 N.E.3d 1133, 1137 (Ind. 2014)). We must "give effect to the plain and ordinary meaning of statutory terms," *State v. Hancock*, 65 N.E.3d 585, 587 (Ind. 2016), and there is a presumption that the legislature "intended the statutory language to be applied logically and consistently with the statute's underlying policy and goals." *Daniels*, 109 N.E.3d at 394 (quoting *Walczak v. Labor Works-Ft. Wayne LLC*, 983 N.E.2d 1146, 1154 (Ind. 2013)).

Rodriguez v. State, 129 N.E.3d 789, 798 (Ind. 2019). Additionally, when interpreting a statute, "we will not read into the statute that which is not the expressed intent of the legislature" and "it is just as important to recognize what the statute does not say as to recognize what it does say." *N.D.F. v. State*, 775 N.E.2d 1085, 1088 (Ind. 2002).

[5] Indiana Code section 35-38-1-17(e), which governs sentence modifications, states in relevant part:

> (e) At any time after:
>
> > (1) a convicted person begins serving the person's sentence; and

> (2) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned;
>
> the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing.

Wilson contends that, under that statutory language, the sentencing court can modify a sentence "any time after the Defendant begins serving their sentence" and the statute "contains no specific language confining its application to the executed portion of the Defendant's sentence, nor does it preclude application to defendants on parole at the time of the petition." (Br. of Appellant at 10) (emphasis in original omitted).

[6] Pursuant to plain language of Indiana Code section 35-38-1-17(e), a trial court may modify a defendant's sentence any time "after . . . a convicted person begins serving the person's sentence;" and it is true that parole occurs after a convicted person begins serving the person's sentence. However, the word "parole" does not appear in any portion of Indiana Code section 35-38-1-17. We "may not 'engraft new words' onto a statute[.]" *Kitchell v. Franklin*, 997 N.E.2d 1020, 1026 (Ind. 2013) (*quoting State ex. rel. Monchecourt v. Vigo Circuit Court*, 240 Ind. 168, 172, 162 N.E.2d 614, 616 (1959)). We assume the legislature "chose the words it did for a reason." *State v. Prater*, 922 N.E.2d 746, 750 (Ind. Ct. App. 2010), *trans. denied*. Here the legislature chose to exclude the word "parole" from the plain language of Indiana Code section 35-38-1-17. Based thereon, we conclude the legislature intended for the trial court's

authority to modify a sentence to extend only until the sentence had been served and not while the person was on parole.

[7] Further, a person who is on parole "is not discharged [from parole] until the Indiana Parole Board acts to discharge him." *Majors v. Broglin*, 531 N.E.2d 189, 190 (Ind. 1988). "It has long been the law in Indiana that the Parole Board has almost absolute discretion in carrying out its duties and that it is not subject to the supervision of the Courts." *Murphy v. Indiana Parole Bd.*, 272 Ind. 200, 204, 397 N.E.2d 259, 261 (Ind. 1979). Indiana courts "can not act as a 'Super-Parole Board.'" *Id.* Therefore, the appropriate place for Wilson to request modification would be the Parole Board, not a trial court.

Conclusion

[8] Wilson has not demonstrated the trial court has authority to modify Wilson's sentence while he is on parole. Accordingly, we affirm.

[9] Affirmed.

Brown, J., and Pyle, J., concur.