

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jordan Allen Collins,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 7, 2022

Court of Appeals Case No.
22A-CR-670

Appeal from the Hancock Circuit
Court

The Honorable Scott Sirk, Judge

The Honorable Cody B. Coombs,
Magistrate

Trial Court Cause No.
30C01-1801-F5-36

Altice, Judge.

Case Summary

- [1] Upon being convicted of Level 5 felony sexual misconduct with a minor and Level 3 felony rape, Jordan A. Collins was sentenced to an aggregate term of eight years in the Indiana Department of Correction (DOC) with six years executed and two years suspended to probation. The executed portion included four years in the DOC and two years as a direct commitment to community corrections with the first year of community corrections on work release and the second on home detention.
- [2] Due to the COVID-19 pandemic, the Hancock County Community Corrections (HCCC) Work Release Program was suspended in May 2020 and remained suspended at the time Collins was to begin his direct commitment to community corrections. Because the work release portion of Collins's direct commitment became impossible to fulfill, the trial court modified the sentence by changing the one year of work release to one year in the DOC followed by, as originally ordered, the one-year direct commitment to community corrections home detention and then probation.
- [3] On appeal, Collins argues that the trial court had no authority to modify his sentence in this manner and that he should be released to home detention for the remainder of his two years of direct commitment to community corrections. We conclude, however, that, the trial court never had authority in the first place to impose a direct commitment to community corrections for Collins's sex offenses. Thus, the trial court had authority to correct the illegal sentence. And

because the modified sentence still contains an improper direct commitment for the sixth year of Collins’s sentence, we remand for further correction.

[4] We affirm in part, reverse in part, and remand.

Facts & Procedural History

[5] Following a bench trial, Collins was convicted of Level 5 felony sexual misconduct with a minor and Level 3 felony rape. The events occurred at a drunken party in the early morning hours of January 1, 2018. Collins was nineteen at the time and his victim had just turned fourteen.¹

[6] On July 1, 2019, the trial court sentenced Collins to concurrent sentences of two years for the Level 5 felony and eight years for the Level 3 felony. The sentencing order indicated that the sentence was to be served in this manner: “6 years to be executed as follows: 4 years DOC, 2 years as a direct commitment to Community Corrections with the 1st year on work release followed by 1 year on home detention.” *Appellant’s Appendix Vol. II* at 103. The trial court ordered the suspended portion of the sentence to be served on sex offender specific probation.

[7] In June 2020, Collins petitioned the trial court for a sentence modification, which the trial court denied following a hearing. Thereafter, in September

¹ The detailed facts, which we need not recount here, are set out in his direct appeal, No. 19A-CR-1563 (Ind. Ct. App. April 9, 2020), *trans. denied*. Collins’s convictions were affirmed on direct appeal.

2021, the trial court summarily determined that Collins was not an appropriate candidate for the community transition program through HCCC.

[8] On October 14, 2021, the trial court received a letter from Collins. In the letter, Collins indicated that the HCCC Work Release Program had been suspended and asked that the court switch his one year in that program to home detention. The trial court interpreted the letter as a motion to modify sentence and summarily denied the motion.

[9] On November 4, 2021, A. Wade Kennedy, the executive director of HCCC, filed an informational report (the Report) with the trial court. Kennedy indicated that, pursuant to the sentencing order, Collins was to be released from the DOC and placed as a direct commitment to the HCCC Work Release Program on December 5, 2021, but that the program had been suspended since May 2020. Under the circumstances, Kennedy advised that HCCC had “no objection” to Collins serving both years of his direct commitment on home detention if the trial court agreed. *Appellant’s Appendix Vol. IV* at 56.

[10] The trial court scheduled a hearing regarding the Report for November 18, 2021. After the hearing, at which Collins did not appear in person but was represented by counsel, the trial court modified the sentence for the rape conviction as follows: “The defendant is sentenced to 8 years to the [DOC]; with 5 years executed at the [DOC] followed by 1 year executed as a direct commitment to [HCCC] Home Detention, and then 2 years suspended to Sex Offender Probation.” *Id.* at 61.

[11] Collins filed a timely motion to correct error arguing that the trial court had improperly lengthened his DOC sentence without authority. Collins also raised a due process issue, noting that he was not present for the November 18 hearing that resulted in a modification of his sentence. The trial court granted the motion to correct error on December 27, 2021, vacated the prior order, and ordered Collins to “serve his two-year community corrections sentence in home detention.” *Id.* at 67.

[12] The following day, the State filed a motion to correct error. The State argued that trial courts retain authority to correct an illegal sentence, which the instant invalid sentence was tantamount to, and that Collins was not entitled to a reduced level of supervision – home detention instead of work release – simply because part of the original sentence was now impossible to fulfill. The State requested that the trial court schedule “a re-sentencing hearing on the issue of how [Collins’s] previous sentence regarding the one (1) year of Work Release should be served, so that both [parties] can be present to make proper arguments in regards to the original sentence which was imposed.” *Id.* at 70. Collins objected to the State’s motion to correct error. The trial court scheduled a hearing on the motion to correct error and issued a stay of the December 27, 2021 order.

[13] A brief hearing on the motion to correct error was held on February 23, 2022. The trial court took the matter under advisement and scheduled a sentencing hearing for March 3, 2022. At the sentencing hearing, the trial court explained that the original sentence was now “an impossible sentence” and therefore

needed to be “corrected.” *Transcript* at 37. The court noted that it did not believe it was increasing the sentence at all because, from the start, it ordered six years of Collins’s eight-year sentence to be executed and that “it just happens to be that two of those were to be done as a direct commitment.” *Id.* The trial court then modified the executed portion of his sentence to five years in the DOC followed by one year as a direct commitment to HCCC home detention. The trial court explained: “I do not feel comfortable moving him from the [DOC] right to home detention. That was not my intent when I started. That’s a lower level of confinement [] than what I wanted.” *Id.* at 38. The court indicated, however, that if HCCC were to reintroduce the work release program, Collins could petition the court to have his placement modified to work release.

[14] The trial court issued its written Order on Sentence Modification Hearing that same day. Collins now appeals. On April 8, 2022, this court granted Collins’s motion to expedite the appeal, as his projected release date from the DOC to home detention is September 5, 2022.

Discussion & Decision

[15] Collins argues that the trial court lacked authority to re-sentence him and that even if it had such authority, the modified sentence could not be more punitive than the original. Thus, Collins contends that he should be immediately released from the DOC to serve the remainder of his direct commitment to HCCC on home detention. We cannot agree.

[16] Here, the trial court originally sentenced Collins, in 2019, to eight years in the DOC with two years suspended to probation. The six-year executed portion of his sentence was ordered to be served as four years in the DOC followed by two years as a direct commitment to HCCC with the first year on work release and the second on home detention. When Collins was due to start his direct commitment in the HCCC Work Release Program, that alternative placement was unavailable because the entire program had been suspended since May 2020 due to the pandemic. Accordingly, that portion of the sentence became an impossibility and created a conundrum for the trial court necessitating modification of the original sentence. Collins argued that the fifth year of executed time should be ordered to be served through a direct commitment to home detention, while the State contended that it should be served in the DOC. The court chose the latter option, which we conclude it had authority to do.

[17] Ind. Code § 35-38-2.6-3, which addresses direct placement in a community corrections program, provides in relevant part:

(a) The court may, at the time of sentencing, suspend the sentence and order a person to be placed in a community corrections program as an alternative to commitment to the department of correction. The court may impose reasonable terms on the placement

(b) Placement in a community corrections program under this chapter is subject to the availability of residential beds or home detention units in a community corrections program.

Due to the unavailability of residential beds – indeed, the unavailability of the entire work release program – Collins could not be placed in HCCC as ordered, which resulted in HCCC seeking direction from the trial court. Under these specific circumstances, we understand the trial court’s consideration of the impossibility of this portion of the executed sentence as being akin to an illegal sentence that requires correction.

[18] Moreover, the direct commitment portion of the original sentence was, in fact, facially invalid from the start. I.C. § 35-38-2.6-1(b)(1) expressly provides that the direct placement chapter does not apply to persons convicted of sex crimes, which includes Collins’s conviction for rape. In other words, the trial court had no statutory authority to order Collins’s executed time to be served outside the DOC through a direct placement in HCCC.

[19] While a trial court has wide discretion in sentencing, it is well established that the court must act within statutorily prescribed limits. *State v. Thomas*, 827 N.E.2d 577, 580 (Ind. Ct. App. 2005) (considering whether the trial court exceeded its statutory authority by sentencing defendant to serve his executed sentence in the community corrections home detention program); *see also Lockhart v. State*, 671 N.E.2d 893, 904 (Ind. Ct. App. 1996); *Niece v. State*, 456 N.E.2d 1081, 1084 (Ind. Ct. App. 1983).

A sentence which is contrary to, or violative of, the penalty mandated by the applicable statute is an illegal sentence. *Id.* When the sentence imposed by the trial court is found to be improper, it is the general if not unanimous rule that the trial court has the power to vacate the illegal sentence and impose a

proper one. *Williams v. State*, 494 N.E.2d 1001, 1004 (Ind. Ct. App. 1986); see *Devaney v. State*, 578 N.E.2d 386, 389 (Ind. Ct. App. 1991) (holding that it is the duty of the appellate courts to bring illegal sentences into compliance even if the correction subsequently increases the sentence). Imposition of the corrected sentence does not run afoul of the prohibition against double jeopardy.

Lockhart, 671 N.E.2d at 904.

[20] The trial court had the authority to correct the impossible and illegal sentence in this case and, contrary to Collins's suggestion, could not simply change the fifth year of executed time to a direct commitment to home detention through HCCC. See I.C. § 35-38-2.6-1(b)(1). The trial court could only order the executed time for the rape conviction to be served in the DOC. Accordingly, we affirm this part of the corrected sentence.

[21] Finally, we cannot ignore the fact that the trial court improperly ordered Collins to serve his sixth year of executed time via a direct commitment to home detention through HCCC. As addressed above, Collins is not statutorily entitled to such an alternative placement. On remand, the trial court is directed to correct the sentence, which may include modifying that year from executed to suspended time to be served on home detention. Cf. *Perry v. State*, 25 N.E.3d 771,771 (Ind. Ct. App. 2015) (addressing, in another context, the legal distinction between the use of home detention as a condition of probation and the use of home detention as a direct placement in community corrections), *trans. denied*.

[22] Judgment affirmed in part, reversed in part, and remanded.

Vaidik, J. and Crone, J., concur.