MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

State of Indiana,
Appellant-Plaintiff

v.

David Henry Carr,
Appellee-Defendant

October 24, 2024

Court of Appeals Case No.
24A-CR-1361

Appeal from the Jennings Circuit Court

The Honorable Murielle S. Bright, Judge

Trial Court Cause No.
40C01-2210-F4-17

Memorandum Decision by Judge Vaidik
Chief Judge Altice and Judge Crone concur.

Vaidik, Judge

[1] David Henry Carr pled guilty to Level 4 felony unlawful possession of a firearm by a serious violent felon. The plea agreement called for an executed sentence of six years, with placement left to the trial court's discretion. The court ordered Carr to serve his sentence on community corrections. One year later, Carr moved to modify his sentence under Indiana Code section 35-38-1-17. Carr noted that he had done well on community corrections and asked that the remainder of his sentence be suspended to supervised probation. In response, the State said it was open to probation in the future but not with Carr only one year into his sentence, and that without the State's consent the court didn't have the authority to modify the sentence to probation. The court disagreed with the State and granted Carr's motion.

[2] The State appeals, renewing its argument that the trial court wasn't authorized to suspend Carr's sentence to probation. It cites Section 35-38-1-17(e), which gives courts the power to modify sentences but includes this limitation: "However, if the convicted person was sentenced under the terms of a plea agreement, the court may not, without the consent of the prosecuting attorney, reduce or suspend the sentence and impose a sentence not authorized by the plea agreement." The State contends that this provision barred the trial court from modifying Carr's sentence to probation because (1) the plea agreement called for a fully executed sentence and therefore didn't authorize a sentence of probation and (2) the State hasn't yet consented to such a modification.

[3] Carr acknowledges the plea-agreement limitation in Section 35-38-1-17(e) but argues that we should affirm the trial court anyway because of his undisputed success on community corrections. Unfortunately for Carr, that success is irrelevant under the statute as currently written. The trial court could modify his sentence to probation only if his plea agreement made probation an option or if the State consented to modifying the sentence to probation. Neither circumstance is present. Therefore, while we join the trial court in commending Carr's performance on community corrections, we are constrained to reverse the modification. *See Rodriguez v. State*, 129 N.E.3d 789, 797 (Ind. 2019) (holding that Section 35-38-1-17(e) "only allows a court to reduce or suspend a sentence in a way in which it was authorized **at the time of sentencing**").

[4] Reversed.

Altice, C.J., and Crone, J., concur.

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