MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lyndal Woosley, Jr.,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

September 10, 2021

Court of Appeals Case No. 21A-CR-351

Appeal from the Harrison Superior Court

The Honorable Joseph L. Claypool, Judge

Trial Court Cause No. 31D01-1711-F2-974

May, Judge.

[1] Lyndal Woosley, Jr., appeals from the trial court's denial of the motion to correct error he filed after the trial court denied his motion for a sentence modification. He raises two issues for our review, which we consolidate and restate as whether the trial court erred in denying his motion to correct error because he was entitled to an evidentiary hearing on his motion for a sentence modification. We affirm.

Facts and Procedural History

[2] On November 30, 2017, the State charged Woosley with one count of Level 2 felony dealing in methamphetamine.[1] On February 4, 2019, the State and Woosley reached a plea agreement. Woosley agreed to plead guilty on the condition that he receive a sentence of thirteen years with three of those years suspended to probation. The State also noted that it did not object to Woosley's placement and participation in purposeful incarceration, which is a substance abuse treatment program administered by the Indiana Department of Correction ("IDOC"). The trial court accepted the plea agreement, and on April 23, 2019, the trial court issued an order memorializing Woosley's judgment of conviction and sentence. The order also provided: "Upon successful completion of a clinically appropriate substance abuse treatment

[1] Ind. Code § 35-48-4-1.1(e).

program as determined by IDOC, the Court will consider a modification to this sentence." (App. Vol. II at 68.)

[3] On February 3, 2020, IDOC Addiction Recovery Specialist Courtney Seeler sent a letter to the trial court notifying the court that Woosley successfully completed the purposeful incarceration program on January 30, 2020. Seller enclosed with the letter a three-page summary detailing Woosley's progress, including the determination that "Mr. Woosley appears to this writer to be serious, [sic] and committed to his recovery." (*Id*. at 72.) On March 17, 2020, Woosley filed a motion for modification of sentence and a motion for the IDOC to prepare a progress report. Without holding a hearing on Woosley's motions, the trial court issued an order on April 6, 2020, stating: "The Court, after having read, reviewed and given due consideration of defendant's motion and being duly advised in the premises, now finds that the Defendant's motion should be denied." (*Id*. at 78.)

[4] Woosley then filed a motion to correct error on April 16, 2020. The motion asked the court to hold a hearing whereby Woosley could "testify as to all the positive things he has done while at [IDOC] and his plans upon release to Court services/community corrections or otherwise." (*Id*. at 79.) The trial court summarily denied Woosley's motion to correct error.

Discussion and Decision

[5] Woosley challenges the trial court's denial of his motion to correct error.[2] We review the denial of such a motion for an abuse of discretion. *Ind. Bureau of Motor Vehicles v. Watson*, 70 N.E.3d 380, 384 (Ind. Ct. App. 2017). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or when the court misinterprets the law. *Id*. This analysis often requires us to also consider the standard of review applicable to the underlying ruling. *487 Broadway Co., LLC v. Robinson*, 147 N.E.3d 347, 350 (Ind. Ct. App. 2020).

[6] Woosley argues the court erred by not providing him an evidentiary hearing on his motion for a sentence modification. 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, we apply a de novo standard of review when, as here, the appeal presents a pure question of law. *See State v. Holloway*, 980 N.E.2d 331, 334 (Ind. Ct. App. 2012).

[7] Indiana Code section 35-38-1-17 governs requests for a reduction or suspension of sentence, and that statute provides:

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[2] The State asks us to dismiss Woosley's appeal because Woosley filed his notice of appeal more than thirty days after his motion to correct error was deemed denied. However, we choose to address the merits of Woosley's appeal given our longstanding preference for deciding cases on their merits and Woosley's representation that the COVID-19 pandemic contributed to the delay. *See Milbank Ins. Co. v. Ind. Ins. Co.*, 56 N.E.3d 1222, 1228 (Ind. Ct. App. 2016) (denying motion to dismiss appeal because of longstanding preference for deciding cases on their merits, motions panel's denial of motion to dismiss, and the parties full briefing of the issues).

(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. 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 court must incorporate its reasons in the record.

(f) If the court sets a hearing on a petition under this section, the court must give notice to the prosecuting attorney and the prosecuting attorney must give notice to the victim (as defined in IC 35-31.5-2-348) of the crime for which the convicted person is serving the sentence.

* * * * *

(h) The court may deny a request to suspend or reduce a sentence under this section without making written findings and conclusions.

(i) The court is not required to conduct a hearing before reducing or suspending a sentence under this section if:

> (1) the prosecuting attorney has filed with the court an agreement of the reduction or suspension of the sentence; and
>
> (2) the convicted person has filed with the court a waiver of the right to be present when the order to reduce or suspend the sentence is considered.

Subsection (f) is conditioned upon the court setting a hearing, which indicates that a hearing is not mandatory. I.C. § 35-38-1-17(f) ("**If** the court sets a hearing on a petition under this section, . . .") (emphasis added). Subsection (i) prohibits the trial court from granting a motion for sentence modification without a hearing unless certain preconditions are satisfied, but the subsection does not require a hearing when the trial court denies the motion. *See Merkel v. State*, 160 N.E.3d 1139, 1141 (Ind. Ct. App. 2020) ("The statute does not require a trial court to hold a hearing in all cases; it only requires the trial court to conduct a hearing if the court has made a preliminary decision that it is going to modify the sentence."). Thus, the plain language of the statute does not require the trial court to conduct a hearing before denying a motion for sentence modification.

[8] Nonetheless, Woosley asserts that he "had a 'liberty interest' in having the trial court grant him a hearing on his request for a sentence modification," (Br. of Appellant at 10), and therefore, the trial court's summary denial of his motion for a sentence modification ran afoul of his right to due process under the Fourteenth Amendment. *See* U.S. Const. Amend. XIV ("nor shall any State deprive any person of life, liberty, or property, without due process of law").

Woosley acknowledges that our previous cases have not recognized a "liberty interest" in a sentence modification. *See Beanblossom v. State,* 637 N.E.2d 1345, 1348 (Ind. Ct. App. 1994) ("Beanblossom has no recognized liberty interest in a modification of his sentence under Indiana law, and the due process clause of the fourteenth amendment does not require that the decision to modify be free from Indiana's condition that it be subject to the approval of the prosecuting attorney."), *trans. denied*; *see also Manley v. State*, 868 N.E.2d 1175, 1178 (Ind. Ct. App. 2007) (holding trial court was not required to have a hearing before denying offender's petition for a sentence modification and observing "that if Manley believes courts should conduct hearings before ruling upon the petition, he should direct his efforts toward convincing the legislature to amend I.C. § 35-38-1-17(b) along those lines"), *trans. denied*.

[9] However, Woosley contends his case is distinguishable from prior cases because of the State's agreement not to object to his placement in the purposeful incarceration program and the trial court's indication that it would consider a sentence modification upon Woosley's successful completion of the program. Yet, these facts do not meaningfully differentiate Woosley's case from the ones we have previously decided. Agreeing not to object to a defendant's placement in a substance abuse treatment program does not commit the State to any particular action upon the defendant's completion of the program. Moreover, the trial court's order did not promise it would hold a hearing; it promised it would "consider a modification[.]" (App. Vol. II at 68.) The trial court's denial of Woosley's motion stated that it had "read, reviewed and given due

consideration [to] defendant's motion" before denying it. (*Id*. at 78.) As Woosley received what he was promised, he cannot demonstrate error on this basis.

[10] For all these reasons, we hold that Woosley was not entitled to a hearing on his motion for sentence modification.[3] *See Merkel*, 160 N.E.3d at 1141-42 (Ind. Ct. App. 2020) (holding offender was not entitled to hearing on his motion for sentence modification and emergency release).

Conclusion

[11] Indiana Code section 35-38-1-17 does not require the trial court to conduct a hearing before denying a motion for sentence modification. Nor does Woosley have a due process right to such a hearing. Neither Woosley's plea agreement, nor the trial court's sentencing order obligated the trial court to conduct a hearing. Consequently, we affirm the trial court's denial of Woosley's motion to correct error.

[12] Affirmed.

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[3] To the extent Woosley attempts to raise an argument under the Indiana Constitution, such argument is waived due to his failure to develop an independent argument specifically addressing the Indiana Constitution. *See Bivins v. State*, 642 N.E.2d 928, 942 n.4 (Ind. 1994) (holding defendant waived argument under the Indiana Constitution by failing to present a supporting argument), *reh'g denied*, *cert. denied*, 516 U.S. 1077, 116 S. Ct. 783 (1996). Waiver notwithstanding, a trial court does not violate the Indiana Constitution by denying a motion to modify sentence without a hearing. *See Manley*, 868 N.E.2d at 1178 (holding there is no requirement under the Indiana Constitution to hold a hearing on a motion for sentence modification).

Kirsch, J., and Vaidik, J., concur.