MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE
COURT OF APPEALS OF INDIANA

Maurice Shelley,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Defendant

March 24, 2023

Court of Appeals Case No. 22A-CR-2069

Appeal from the Howard Superior Court

The Honorable Hans S. Pate

Trial Court Cause No. 34D04-1705-F2-83

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] Maurice Shelley, pro se, appeals the trial court's denial of his motion for sentence modification. Shelley raises two issues on appeal: (1) Whether the trial court erred when it addressed his argument in part as a petition for post-conviction relief; and (2) Whether the trial court abused its discretion when it denied Shelley's motion for modification of sentence without providing any explanation for the denial. Because Shelley has not demonstrated he is entitled to any relief, we affirm.

Facts and Procedural History

[2] On May 22, 2017, the State charged Shelley with five counts: Level 2 felony voluntary manslaughter,[1] Level 5 felony involuntary manslaughter,[2] Level 5 felony battery by means of a deadly weapon,[3] Level 5 felony reckless homicide,[4] and Level 5 felony criminal recklessness.[5] On April 29, 2021, the trial court accepted the plea agreement whereby Shelley would plead guilty to involuntary manslaughter and battery by means of a deadly weapon while the State would dismiss the other three counts. Shelley also agreed to admit he was a habitual offender. On May 27, 2021, the court ordered Shelley to serve twelve years for involuntary manslaughter – six years for the conviction plus a six-year

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[1] Ind. Code § 35-42-1-3(a).

[2] Ind. Code § 35-42-1-4(b)(1).

[3] Ind. Code § 35-42-2-1(c)(1).

[4] Ind. Code § 35-42-1-5.

[5] Ind. Code § 35-42-2-2(a).

enhancement for being a habitual offender – consecutive to six years for battery by means of a deadly weapon, for an aggregate sentence of eighteen years.

[3] On March 15, 2022, Shelley moved to modify his sentence and argued his sentence should be reduced because he allegedly had made progress while incarcerated. The State objected to modification of Shelley's sentence. The trial court ordered a progress report from the Department of Correction and then held a hearing on Shelley's motion. After the hearing, Shelley filed a "NOTICE TO THE COURT" that reiterated an issue raised at the hearing on the motion for modification, that issue being that Shelley believed that the habitual portion of his sentence "may be infirm" as it relied on a dismissed count to justify Shelley's status as a habitual offender. (App. Vol. II at 48.) The trial court denied Shelley's motion to modify his sentence in an order that provided:

> Court having reviewed the Motion for Modification of Sentence and the evidence presented at a hearing and arguments of counsel, including the Defense argument that this should also be considered as Petition for Post Conviction Relief due to Ineffective Assistance of Counsel related to the argument of Defense that Mr. Shelley's Habitual Enhancement Sentencing should be set aside due to error, the Court now finds: That the Court having reviewed the audio recording of the sentencing hearing for Cause Number # 34C01-1205-FD-000101, that Defendant did, in fact, plead guilty to the Count 1, Residential Entry as a Class D – Felony by plea agreement in that case, and that the argument related to post conviction relief is DENIED. Additionally, the Motion for Modification of Sentence is also DENIED.

(*Id*. at 52.)

Discussion and Decision

[4] Shelley proceeds pro se on appeal. Appellants who proceed pro se are "held to the same established rules of procedure that trained legal counsel is bound to follow and, therefore, must be prepared to accept the consequences" of their actions. *Perry v. Anonymous Physician 1*, 25 N.E.3d 103, 105 n.1 (Ind. Ct. App. 2014), *trans. denied*, *cert. denied*, 577 U.S. 873 (2015). We "may not become an advocate" for unrepresented parties and instead must consider errors waived when arguments are inadequately developed. *Id*.

[5] Shelley appeals from the trial court's denial of his motion to modify a sentence. We review a trial court's rulings on such a motion for an abuse of discretion. *Newson v. State*, 86 N.E.3d 173, 174 (Ind. Ct. App. 2017), *trans. denied*. "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances or it is a misinterpretation of the law." *Id*.

[6] Where arguments raised call for interpretation of a statute, we apply a de novo review to those "pure questions of law." *Id*. at 175. Our primary goal when interpreting a statute is "to ascertain and give effect to the legislature's intent." *Woodford v. State*, 58 N.E.3d 282, 284 (Ind. Ct. App. 2016). A statute's language is the best evidence of the legislature's intent, and we presume the legislature intended the language to be applied logically and in a "manner

consistent with the statute's underlying policy and goals." *Id*. (quoting *State v. Oddi-Smith*, 878 N.E.2d 1245, 1248 (Ind. 2008)).

1. Addressing post-conviction argument

[7] Shelley first argues the trial court erred when it considered a post-conviction issue in the midst of addressing his motion to modify his sentence. According to Shelley: "Counsel never requested to have the sentence modification motion under advisement to be transformed into a post conviction motion." (Appellant's Br. at 12.) However, Shelley's counsel did, in fact, request the court consider an issue that arguably should have been raised in a post-conviction petition. That issue was whether Shelley's sentence was "infirm" because a "dismissed count was later relied on to make the defendant habitual-eligible." (App. Vol. 2 at 48.) Represented parties speak to the court through their counsel. *Flowers v. State*, 154 N.E.3d 854, 867 (Ind. Ct. App. 2020). As Shelley raised this issue to the trial court through counsel, Shelley cannot now be heard to complain that the court's act of ruling thereon was an error of law. *See Durden v. State*, 99 N.E.3d 645, 656-57 (Ind. 2018) (holding invited-error doctrine precluded remedy for appellant).

2. Denying petition to modify without findings

[8] Shelley also argues the court committed error when it failed to include any findings to explain why it denied his request for modification. In support, Shelley cites Indiana Code section 35-38-1-17(e), which provides:

> (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 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.*

(emphasis added). That final sentence, Shelley asserts, required the trial court to provide an explanation for the denial of his motion to modify. However, another subsection of that same statute provides: "(h) The court may deny a request to suspend or reduce a sentence under this section without making written findings and conclusions." Ind. Code § 35-38-1-17(h). Accordingly, the trial court did not err when it denied Shelley's motion to modify his sentence without explaining the reasons for its denial of his motion. *See*, *e.g.*, *Newson*, 86 N.E.3d at 175 (statutory language demonstrates appellant not entitled to relief because Indiana Code section 35-38-1-17 precludes modification for "violent criminal").

Conclusion

[9] Because neither of Shelley's arguments on appeal demonstrates the trial court erred when it denied his motion for modification, we affirm the trial court's denial of Shelley's motion.

[10] Affirmed.

Mathias, J., and Bradford, J., concur.