

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Richard Dean Martin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 26, 2021

Court of Appeals Case No.
20A-CR-1327

Appeal from the Clark Circuit
Court

The Honorable Andrew Adams,
Judge

Trial Court Cause No.
10C01-0703-FA-42

May, Judge.

- [1] Richard Dean Martin appeals the trial court's denial of his petition for modification of sentence. We affirm.

Facts and Procedural History

[2] Martin was convicted of six counts of Class A felony child molesting¹ on August 21, 2008. The trial court imposed a fifty-year sentence as to each count and ordered Martin to serve the sentences concurrently. We affirmed Martin's convictions on direct appeal. *Martin v. State*, 10A01-812-CR-568, 2009 WL 2567978 at *5 (Ind. Ct. App. Aug. 20, 2009), *trans. denied*. Martin filed a petition for sentence modification on September 9, 2009, which the trial court denied on February 4, 2010. Through post-conviction proceedings in 2015, Martin's sentences on three counts of child molesting were reduced to thirty years because the sentences ran afoul of the United States Supreme Court's decision in *Blakely v. Washington*, 524 U.S. 296 (2004), but his aggregate sentence remained fifty years. *Martin v. State*, No. 10A01-1409-PC-419, 2015 WL 3818974 at *7 (Ind. Ct. App. June 17, 2015), *trans. denied*.

[3] Martin filed a petition for modification of sentence on November 27, 2018. The trial court issued an order denying his petition on December 27, 2018. The State filed an objection to Martin's petition for modification of sentence on January 7, 2019, but the State later petitioned the court to appoint a special prosecutor. In support of its motion for a special prosecutor, the State explained, "The Clark County Prosecuting Attorney recognizes that a Special Prosecutor is needed and should be appointed without delay in order to avoid

¹ Ind. Code § 35-42-4-3 (1998).

the appearance of impropriety by the exercise of prosecutorial discretion in this case.” (App. Vol. II at 28.) The trial court rescinded its previous order denying Martin’s petition for modification of sentence and appointed a special prosecutor. The State, through the special prosecutor, filed an objection to Martin’s petition, and the trial court denied Martin’s petition on April 20, 2020.

Discussion and Decision

- [4] Generally, we review a trial court’s denial of a petition for modification of sentence 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.* However, we employ a de novo standard of review when the case presents a pure question of law. *Id.*
- [5] An offender may petition the court to reduce or suspend a portion of the offender’s sentence if the offender meets the eligibility requirements specified in Indiana Code section 35-38-1-17. That statute states, in relevant part:

(c) Except as provided in subsections (k) and (m), this section does not apply to a violent criminal.

(d) As used in this section, “violent criminal” means a person convicted of any of the following offenses:

* * * * *

(10) Child molesting (IC 35-42-4-3).

(k) This subsection applies to a convicted person who is a violent criminal. A convicted person who is a violent criminal may, not later than three hundred sixty-five (365) days from the date of sentencing, file one (1) petition for sentence modification under this section without the consent of the prosecuting attorney. After the elapse of the three hundred sixty-five (365) day period, a violent criminal may not file a petition for sentence modification without the consent of the prosecuting attorney.

Ind. Code § 35-38-1-17.

[6] Martin met the statute's definition of "violent criminal" by virtue of his convictions of child molesting. *See* Ind. Code § 35-38-1-17(d)(10). Therefore, Martin could move the court for a reduction or suspension of his sentence only if he complied with subsection (k) of the statute.² Martin filed the instant petition for modification of sentence more than 365 days after he was sentenced, and he did not receive the prosecutor's consent to file the petition. In fact, the State filed two objections to his petition. Thus, Martin was not eligible to file a petition for sentence modification, and the trial court did not err in denying his petition. *See Barber v. State*, 122 N.E.3d 809, 811 (Ind. 2019)

² While a violent criminal as defined by the statute also may petition for a reduction or suspension of sentence if the offender complies with subsection (m), that subsection is not applicable in this case because Martin did not commit his offenses within the appropriate timeframe. *See* Ind. Code § 35-38-1-17(m) ("Notwithstanding subsection (k), a person who commits an offense after June 30, 2014, and before May 15, 2015, may file one (1) petition for sentence modification without the consent of the prosecuting attorney, even if the person previously filed a petition for sentence modification.").

(holding “violent criminal” was not eligible to file a motion to modify sentence).

Conclusion

[7] The trial court did not err in denying Martin’s petition for sentence modification because he was not eligible to file such a petition. Therefore, we affirm the trial court’s judgment.

[8] Affirmed.

Kirsch, J., and Bradford, C.J., concur.