

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Stephon Bradley,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 23, 2023

Court of Appeals Case No.  
22A-CR-2329

Appeal from the  
Marion Superior Court

The Honorable  
Matthew E. Symons, Magistrate

Trial Court Cause No.  
49G03-1901-F4-3104

**Memorandum Decision by Senior Judge Robb**  
Chief Judge Altice and Judge Bradford concur.

## **Robb, Senior Judge.**

### Statement of the Case

- [1] Stephon Bradley appeals from the trial court's denial of his motion to reconsider, which followed the trial court's denial of his motion to modify his sentence. Concluding the trial court did not err, we affirm.

### Facts and Procedural History

- [2] In 2019, a jury concluded Bradley was guilty of Level 4 felony burglary. The trial court imposed a sentence of ten years, with one year suspended to probation. Bradley appealed, but he later moved to dismiss his appeal. This Court granted Bradley's motion in an unpublished order. *Bradley v. State*, Case No. 19A-CR-1554 (Ind. Ct. App. Dec. 30, 2019).
- [3] In June 2022, Bradley moved the trial court to modify his sentence. The court ordered the State to respond by a certain date, but the State did not comply. In any event, the court denied Bradley's motion.
- [4] Next, Bradley moved the trial court to reconsider its denial of his motion to modify his sentence. The court ordered the State to respond to Bradley's motion. The State filed a response in opposition to Bradley's motion to reconsider, asserting: (1) Bradley could not seek sentence modification without the State's agreement; and (2) the State did not agree to Bradley's request. The court denied Bradley's motion, and this appeal followed.

## Discussion and Decision

- [5] Bradley argues the trial court erred in denying his request to modify his sentence. Our review of this issue is impeded because he has failed to file an Appellant's Appendix. And the State's Appellee's Appendix does not provide us with either Bradley's motion to modify sentence or his motion to reconsider. However, Bradley has attached several documents to his Notice of Appeal. Because failure to include an item in an Appendix "shall not waive any issue or argument," *see* Ind. Appellate Rule 49(B), we will address Bradley's arguments as best we can, based on the limited record he has provided.
- [6] Bradley appeals following the denial of his motion to reconsider, which we consider as a motion to correct error. *See Newman v. State*, 177 N.E.3d 888, 892 (Ind. Ct. App. 2021) (addressing motion to reconsider as a motion to correct error, following the denial of a motion for sentence modification), *trans. denied*. "We review a trial court's ruling on a motion to correct error for an abuse of discretion." *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016), *trans. denied*. We also review a trial court's ruling on a motion for sentence modification for abuse of discretion. *Newson v. State*, 86 N.E.3d 173, 174 (Ind. Ct. App. 2014), *trans. denied*. "An abuse of discretion occurs when the trial court's decision is contrary to the logic and effect of the facts and circumstances before it or the reasonable inferences therefrom." *Lowrance*, 64 N.E.3d at 938.
- [7] Indiana Code section 35-38-1-17(k) (2018) provides, in relevant part:

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.

[8] Indiana Code section 35-38-1-17 defines a violent criminal as a person convicted of offenses including Level 4 felony burglary. Bradley thus qualifies as a violent criminal, and his motion for sentence modification was subject to the requirements of Indiana Code section 35-38-1-17(k). The trial court sentenced Bradley on June 11, 2019, but Bradley did not move for sentence modification until June 22, 2022, more than three years later. By statute, Bradley's motion could not proceed without the consent of the prosecuting attorney, and the State did not consent. As a result, the court did not abuse its discretion in denying Bradley's motion to reconsider. *See Newson*, 86 N.E.3d at 174 (trial court did not err in denying motion to modify sentence; movant met the definition of a violent criminal and filed the motion more than 365 days after sentencing; based on the prosecutor's objection, "the trial court could not have granted [defendant's] requested relief").

[9] Bradley argues the trial court was obligated to hold a hearing on his motion to modify sentence because the court had stated during sentencing that it would modify the sentence at a later date. We disagree. Bradley attached to his Notice of Appeal an apparent excerpt from the sentencing transcript. Assuming for the sake of argument that the excerpt is valid, the trial court did not promise

to modify Bradley's sentence. Instead, the court stated only that it "might consider" ordering Bradley to be placed in a Purposeful Incarceration program if Bradley participates in other programs while incarcerated. *See* attachments to Notice of Appeal. The trial court did not need to hold a hearing on Bradley's motion to modify sentence or motion to reconsider. *See Reichard v. State*, 510 N.E.2d 163, 167 (Ind. 1987) (trial court did not err in failing to hold hearing on motion to modify sentence; court had not previously made a preliminary determination to suspend or reduce the sentence).

[10] Bradley also argues modification was appropriate because the circumstances of his burglary offense involved a residential entry that occurred while no one was home, and as a result no one was hurt or endangered. He cites no authorities in support of this argument. In any case, Bradley's argument misses the point, because his offense meets the definition of a violent crime under Indiana Code section 35-38-1-17 regardless of the circumstances under which he committed the offense. Bradley has failed to demonstrate the trial court abused its discretion.

## Conclusion

[11] For the reasons stated above, we affirm the judgment of the trial court.

[12] Affirmed.

Altice, C.J., and Bradford, J., concur.