

# MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited 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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James Andrew Bowman,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 11, 2023

Court of Appeals Case No.  
22A-CR-1308

Appeal from the Marion Superior  
Court

The Honorable William J. Nelson,  
Judge

Trial Court Cause No.  
48D18-2008-F5-24973

**Brown, Judge.**

[1] James Andrew Bowman appeals the revocation of his placement in community corrections and probation. On cross-appeal, the State argues that we should dismiss the belated appeal. We dismiss.

### *Facts and Procedural History*

[2] On August 11, 2020, the State charged Bowman under cause number 49G05-2008-F5-24973 (“Cause No. 73”) with: Count I, domestic battery resulting in serious bodily injury as a level 5 felony; Count II, strangulation as a level 6 felony; Count III, criminal recklessness as a level 6 felony; Count IV, domestic battery as a level 6 felony; and Count V, battery as a class B misdemeanor. On May 6, 2021, the State filed an amended information adding Count VI, domestic battery as a level 5 felony. On May 20, 2021, Bowman and the State entered into a plea agreement in which Bowman agreed to plead guilty to Count VI, domestic battery as a level 5 felony, and the State agreed to dismiss the remaining counts.

[3] On May 21, 2021, the court sentenced Bowman to four years with one year in the Department of Correction (“DOC”), one year in community corrections, and two years suspended to probation. An Order of Probation informed Bowman that he “[s]hall . . . not commit any criminal offense after sentencing in this cause.” Appellant’s Appendix Volume II at 114.

[4] On June 2, 2021, the Marion County Community Corrections filed a Notice of Community Corrections Violations alleging that a “Device Communication Loss” alert occurred at 5:36 p.m. on or about June 2, 2021, indicating that

Bowman was not being monitored and his whereabouts were unknown, and that he failed to maintain contact with community corrections. *Id.* at 116. On December 17, 2021, the Marion County Community Corrections filed an Amended Notice of Community Corrections Violation asserting that Bowman's whereabouts were unknown until he was taken into custody on December 7, 2021, and adding a third allegation which asserted that he was arrested and charged with possession of methamphetamine as a level 6 felony, invasion of privacy as a class A misdemeanor, and possession of paraphernalia as a class C misdemeanor under cause number 49D18-2112-F6-37292 ("Cause No. 92").

[5] Meanwhile, the State filed a Notice of Probation Violation on June 17, 2021, alleging that Bowman failed to comply with community corrections placement and noting that the Marion County Community Corrections filed a notice of violation on June 2, 2021. On December 10, 2021, the State filed an Amended Notice of Probation Violation asserting the new allegations that Bowman failed to refrain from committing a new criminal offense, specifically that he was arrested and charged with invasion of privacy as a class A misdemeanor, possession of methamphetamine as a level 6 felony, and possession of paraphernalia as a class C misdemeanor under Cause No. 92, and that he failed to comply with a no contact order.

[6] On December 9, 2021, the court held a hearing. The court and Bowman discussed the allegation regarding the device used by community corrections, the court asked where the device was located, and Bowman answered: "The

device is actually at my home. I wore it for three-and-a-half months before I cut it off, sir.” Transcript Volume II at 10.

[7] On March 11, 2022, the court held another hearing. The court stated: “Mr. Bowman is set for a contested hearing on allegations of violating his community corrections sentence, amended notice filed back in December.” *Id.* at 40. Bowman’s counsel indicated that Bowman was going to admit “to number three, which is the new arrest.” *Id.* Bowman admitted that he was arrested for possession of methamphetamine, among other charges, on December 7, 2021, under Cause No. 92. After some discussion, the court stated: “Due to his admission to allegation number three, the Court does revoke his community correction sentence. Ordered to serve 294 days. Yeah, 294 days in the [DOC]. His probation is revoked as well with an additional 730 days in the [DOC] consecutively.” *Id.* at 47. In an abstract of judgment dated March 11, 2022, the court revoked Bowman’s placement in community corrections and sentenced him to serve 1,024 days in the DOC. It also states: “Revocation of both Marion County Community Corrections & Marion County Probation.” Appellant’s Appendix Volume II at 33.

[8] On May 12, 2022, Bowman filed a Verified Motion for an Order Granting Leave to File Belated Notice of Appeal. Bowman’s counsel alleged that she did not recall that Bowman was given his appellate rights by the court on March 11, 2022, she did not recall informing him of his appellate rights on that date, and Bowman “did mention to Defense counsel that he wished to appeal this

sentence before today’s date.” *Id.* at 152. The court granted Bowman’s motion. On June 7, 2022, Bowman filed a Belated Notice of Appeal.

### *Discussion*

[9] The State argues that dismissal is proper because Bowman is not an “eligible defendant” as defined in Ind. Post-Conviction Rule 2. Appellee’s Brief at 10. The State also argues this case is neither rare nor exceptional and we should decline to entertain the merits of the trial court’s revocation. In his reply brief, Bowman acknowledges that belated appeals from orders revoking probation are not available pursuant to Ind. Post-Conviction Rule 2, but requests that we exercise our discretion under Ind. Appellate Rule 1 to address the merits of this appeal.

[10] Generally, the decision whether to grant permission to file a belated notice of appeal is within the sound discretion of the trial court. *Moshenek v. State*, 868 N.E.2d 419, 422 (Ind. 2007), *reh’g denied*. However, if the trial court does not hold a hearing before granting or denying a petition to file a belated notice of appeal, the appellate court owes no deference to the trial court’s decision, and the review of the granting of the petition is *de novo*. *Baysinger v. State*, 835 N.E.2d 223, 224 (Ind. Ct. App. 2005). Here, the court granted Bowman’s motion without holding a hearing. Therefore, we review the trial court’s grant of the motion *de novo*. *See id.*

[11] Ind. Appellate Rule 9 provides “[a] party initiates an appeal by filing a Notice of Appeal with the Clerk . . . within thirty (30) days after the entry of a Final

Judgment is noted in the Chronological Case Summary” and, “[u]nless the Notice of Appeal is timely filed, the right to appeal shall be forfeited except as provided by” Ind. Post-Conviction Rule 2. Ind. Post-Conviction Rule 2 “allows belated appeals in certain criminal cases.” *Dawson v. State*, 943 N.E.2d 1281, 1281 (Ind. 2011). Ind. Post-Conviction Rule 2 provides:

An eligible defendant convicted after a trial or plea of guilty may petition the trial court for permission to file a belated notice of appeal of the conviction or sentence if;

- (1) the defendant failed to file a timely notice of appeal;
- (2) the failure to file a timely notice of appeal was not due to the fault of the defendant; and
- (3) the defendant has been diligent in requesting permission to file a belated notice of appeal under this rule.

[12] It further provides:

An “eligible defendant” for purposes of this Rule is a defendant who, but for the defendant’s failure to do so timely, would have the right to challenge on direct appeal a conviction or sentence after a trial or plea of guilty by filing a notice of appeal, filing a motion to correct error, or pursuing an appeal.

Ind. Post-Conviction Rule 2. The Indiana Supreme Court has held that “the sanction imposed when probation is revoked does not qualify as a ‘sentence’ under the Rule” and “belated appeals from orders revoking probation are not presently available pursuant to Post-Conviction Rule 2.” *Dawson*, 943 N.E.2d at 1281. Thus, Bowman is not an “eligible defendant” under Ind. Post-

Conviction Rule 2. *See id.* Accordingly, Bowman has forfeited his right to appeal.<sup>1</sup> *See id.* at 1281-1282.

[13] To the extent Bowman argues there are extraordinarily compelling reasons to allow this appeal to proceed on the merits and requests that we exercise our discretion under Ind. Appellate Rule 1, we note that the Indiana Supreme Court has held that, if a right to appeal has been forfeited, “the question is whether there are extraordinarily compelling reasons why this forfeited right should be restored.” *In re Adoption of O.R.*, 16 N.E.3d 965, 971 (Ind. 2014). In *In re Adoption of O.R.*, the Court concluded that a father’s otherwise forfeited appeal deserved a determination on the merits “in light of Appellate Rule 1, Father’s attempt to perfect a timely appeal, and the constitutional dimensions of the parent-child relationship.”<sup>2</sup> *Id.* at 972. Here, we find no such extraordinarily compelling reasons. *See Cummings v. State*, 137 N.E.3d 255, 258, 258 n.3 (Ind. Ct. App. 2019) (holding that the defendant was not an “eligible defendant” under Ind. Post-Conviction Rule 2, noting that no extraordinarily

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<sup>1</sup> On appeal, Bowman does not mention his April 6, 2022 Motion to Modify Terms of Sentence, which requested that his sentence be modified to “add a Purposeful Incarceration designation on the DOC abstract,” Appellant’s Appendix Volume II at 148, or the court’s April 7, 2022 order related to his motion, or develop any argument regarding how either the motion or the order may impact the conclusion that any appeal of the March 11, 2022 order was belated. Indeed, in his reply brief he appears to concede that the appeal was untimely.

<sup>2</sup> Ind. Appellate Rule 1 provides: “These Rules shall govern the practice and procedure for appeals to the Supreme Court and the Court of Appeals. The Court may, upon the motion of a party or the Court’s own motion, permit deviation from these Rules.”

compelling reasons existed to restore the defendant's right to appeal, and dismissing the case).

[14] For the foregoing reasons, we dismiss this appeal.

[15] Dismissed.

Bradford, J., and Pyle, J., concur.