## MEMORANDUM DECISION




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# IN THE COURT OF APPEALS OF INDIANA

Sierra Ann Marie Brown,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff*

June 24, 2021

Court of Appeals Case No. 20A-CR-2231

Appeal from the Madison Circuit Court

The Honorable Thomas L. Clem, Judge

Trial Court Cause No. 48C05-1804-F6-1155

**Mathias, Judge.**

# Case Summary

[1] Sierra Ann Marie Brown pled guilty to two Level 6 felonies and agreed to a sentence of thirty months in the Department of Correction. According to the plea agreement, Brown's thirty-month sentence was stayed pending her successful completion of problem-solving court. When Brown was terminated from problem-solving court for sixteen violations, the trial court ordered her to serve thirty months in the DOC.

[2] Brown now appeals, arguing the trial court had discretion to order her to serve less than the agreed-upon sentence but failed to recognize that discretion. She asks us to remand the case so the court can exercise that discretion. Because the record shows the trial court knew it had discretion but ordered her to serve thirty months in the DOC anyways given the number of violations, Brown's argument fails. We therefore affirm the trial court.

# Facts and Procedural History

[3] In April 2018, the State charged Brown with Level 6 felony unlawful possession of a syringe and Level 6 felony possession of a narcotic drug (heroin). Thereafter, Brown and the State entered into a plea agreement under which Brown agreed to a sentence of thirty months in the DOC, which was stayed

pending her successful completion of Madison County Problem Solving Courts[1] (at which point the judgment and sentence would be vacated). Appellant's App. Vol. II pp. 32, 35. However, if Brown "fail[ed], for any reason, to graduate from the Problem Solving Court program," the stayed sentence would be "immediately imposed and executed." *Id.* at 32.

[4] Brown, who suffers from addiction, bipolar disorder, multiple personalities, and schizophrenia, started participating in Madison County Mental Health Court in December 2019. While in Mental Health Court, Brown completed extended outpatient at the Aspire treatment facility. In May 2020, Brown moved into a halfway house, Stepping Stones. While living at Stepping Stones, Brown started dating a man. When that man died in a car accident, Brown "relapsed on heroin" and did not return to Mental Health Court. Supp. Tr. pp. 7, 9.

[5] In June 2020, Madison County Problem Solving Courts requested termination of Brown's participation in Mental Health Court because of sixteen violations, including failing to undergo drug screens, lying to the judge, failing to attend therapy, associating with felons, and absconding from Mental Health Court. Appellant's App. Vol. II pp. 43-45; *see also* Appellant's Br. p. 5 (Brown acknowledging she had sixteen violations). At an evidentiary hearing held on October 29, Brown admitted all the violations. The trial court said it was "duty

[1] Madison County Problem Solving Courts contains four courts: Madison County Drug Court, Madison County Mental Health Court, Madison County Reentry Court, and Madison County Veterans Court.

bound" "to follow the plea agreement" and "revoked [her] time to the Department of Correction." Supp. Tr. p. 12; *see also* Tr. p. 4.

[6] After going off the record at the October 29 hearing, defense counsel "pointed out that there was an opportunity of an argument" to be made regarding whether Brown had to serve all thirty months in the DOC. Tr. p. 4. The trial court ordered the preparation of a presentence investigation report and scheduled a sanctions hearing for November 12. At the sanctions hearing, the State said that if Brown did "certain things," like "home detention with a weekly screen," it would recommend no DOC time. *Id.* at 5. Defense counsel asked the court to incorporate the PSI into the record. According to the PSI, Brown was not "currently" prescribed any medications for her mental-health issues and had last received "treatment" at Aspire. Appellant's App. Vol. II p. 64. Defense counsel agreed with the State's recommendation, but the trial court did not:

> When looking at your pre-sentence investigation with respect to the IRAS, the Indiana Risk Assessment Score, I've never seen a worse score. You're high in terms of your risk factors in four (4) out of the seven (7) categories. That's never happened before. Secondly, I look at the CCS. I look at the failures to appear. I look at what happened in your problem-solving court. It's among the worst I've ever seen.

Tr. p. 7. The court then ordered Brown to serve all thirty months (minus credit time) in the DOC, recommended Purposeful Incarceration, and "agree[d] to

consider sentence modification upon successful completion of [the] program." Appellant's App. Vol. II p. 13.

[7] Brown now appeals.

# Discussion and Decision

[8] Brown, citing *Holsapple v. State*, 148 N.E.3d 1035 (Ind. Ct. App. 2020), argues the trial court "failed to recognize that it had discretion as to what sanction to impose" and asks us to remand the case "so that that discretion may be exercised." Appellant's Br. p. 5. The State, citing *Mefford v. State*, 165 N.E.3d 571 (Ind. Ct. App. 2021), *trans. denied*, argues the court did not have discretion to impose less than the agreed-upon sentence—thirty months in the DOC. As these cases illustrate, there is a growing discussion in this Court as to whether a trial court has discretion to impose less than the agreed-upon sentence when a defendant is terminated from problem-solving court. Here, however, we need not decide whether the trial court had discretion to impose less than the agreed-upon sentence because clearly the court ultimately concluded it did. At the October 29 hearing, the court said it was "duty bound" "to follow the plea agreement" and ordered Brown to serve all thirty months in the DOC. But the court then changed its mind, ordered a PSI, and scheduled a sanctions hearing. At the sanctions hearing, both the State and defense counsel asked the court not to impose any DOC time. The court disagreed with their recommendation, pointing out Brown's record was one of "the worst" it had ever seen. Since the court knew it had discretion to impose less than the agreed-upon sentence and

simply chose not to exercise that discretion, Brown's argument fails.[2] We therefore affirm the trial court.

[9] Affirmed.

Bradford, C.J., and Brown, J., concur.

[2] Brown does not argue that even if the trial court believed it had discretion, it abused that discretion by ordering her to serve all thirty months in the DOC. Even had that argument been made on appeal, an abuse of discretion is very difficult to establish.