

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Scott E. Miller,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

May 19, 2023

Court of Appeals Case No.
22A-CR-513

Appeal from the LaGrange
Superior Court

The Honorable Lisa M. Bowen
Slaven, Judge

Trial Court Cause No.
44D01-0407-FA-9

Memorandum Decision by Judge Pyle

Judges Bradford and Kenworthy concur.

Pyle, Judge.

Statement of the Case

- [1] Scott E. Miller (“Miller”) appeals pro se the trial court’s denial of his petition to modify his sentence. Concluding that the trial court did not abuse its discretion when it denied Miller’s petition, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether the trial court abused its discretion when it denied Miller’s petition to modify his sentence.

Facts

- [3] In July 2004, a jury convicted Miller of Class A felony dealing in methamphetamine and Class B felony dealing in a schedule II controlled substance. The trial court sentenced Miller to concurrent sentences of fifty (50) years for the Class A felony and twenty (20) years for the Class B felony. This Court affirmed Miller’s convictions on direct appeal. *See Miller v. State*, No. 44A03-0506-CR-259 (Ind. Ct. App. March 16, 2006), *trans. denied*. We also affirmed the denial of Miller’s petition for post-conviction relief. *See Miller v. State*, No. 44A05-1207-PC-376 (Ind. Ct. App. April 18, 2013), *trans. denied*.
- [4] In 2014, Miller filed a petition to modify his sentence, which the trial court denied. Miller filed a second petition to modify his sentence in 2015. The trial court granted the second petition in part to recommend Miller for the Purposeful Incarceration Program at the Department of Correction. In 2017,

Miller filed a third petition to modify his sentence because he had successfully completed a therapeutic community program. The trial court denied Miller's third petition in 2018.

[5] In January 2022, Miller filed a fourth petition to modify his sentence. The prosecutor filed an objection to Miller's petition. The trial court found that pursuant to INDIANA CODE § 35-38-1-17, Miller had "exhausted his limit . . . of the filing of two (2) Petitions for Modification of Sentence within any consecutive period of incarceration[]" and denied Miller's petition. (App. Vol. 2 at 12).

[6] Miller now appeals.

Decision

[7] Miller argues that the trial court abused its discretion when it denied his petition to modify his sentence. We review a trial court's decision regarding the modification of a sentence for an abuse of discretion. *Gardiner v. State*, 928 N.E.2d 194, 196 (Ind. 2010). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or when the trial court misinterprets the law. *Johnson v. State*, 36 N.E.3d 1130, 1133 (Ind. Ct. App. 2015), *trans. denied*.

[8] As an initial matter, we note that Miller has chosen to proceed pro se. We hold pro se litigants to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Accordingly, pro se

litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. *Id.*

[9] We now turn to Miller's argument. A trial court generally has no authority over a defendant after sentencing. *Johnson*, 36 N.E.3d at 1133. One exception is INDIANA CODE § 35-38-1-17, which gives trial courts authority to modify a previously imposed sentence under certain circumstances. *Id.* Contrary to Miller's argument, we apply the version of the statute that is in effect at the time the defendant files the petition to modify his sentence. *State v. Lamaster*, 84 N.E.3d 630, 634 (Ind. Ct. App. 2017).

[10] Here, Miller filed his fourth petition to modify his sentence in January 2022. The version of INDIANA CODE § 35-38-1-17 in effect at that time, and which is still in effect, provides, in relevant part, as follows:

- (j) This subsection applies only to a convicted person who is not a violent criminal. A convicted person who is not a violent criminal may file a petition for sentence modification under this section:
 - (1) not more than one (1) time in any three hundred sixty-five (365) day period; and
 - (2) a maximum of two (2) times during any consecutive period of incarceration;

without the consent of the prosecuting attorney.

[11] Our review of the evidence in this case reveals that the petition for sentence modification that Miller filed in January 2022 was the fourth petition for sentence modification that Miller had filed during his consecutive period of

incarceration. Because the statute limits the number of petitions to modify a sentence to a maximum of two during any consecutive period of incarceration, the trial court properly found that Miller had “exhausted his limit . . . of the filing of two (2) Petitions for Modification of Sentence within any consecutive period of incarceration.” (App. Vol. 2 at 12). Accordingly, the trial court did not abuse its discretion in denying Miller’s fourth petition for sentence modification.¹

[12] Affirmed.

Bradford, J., and Kenworthy, J., concur.

¹ Miller also argues that trial judge demonstrated bias against him. However, he has waived appellate review of this issue because he failed to raise it in the trial court. *See Woods v. State*, 98 N.E.3d 656, 664 (Ind. Ct. App. 2018) (explaining that a party’s failure to raise a claim of judicial bias in the trial court results in waiver of the issue on appeal), *trans. denied*. Waiver notwithstanding, we find no error. The law presumes that a trial judge is unbiased. *Id.* A defendant asserting judicial bias must show that the trial judge’s actions and demeanor showed partiality and prejudiced the case. *Id.* Here, the gravamen of Miller’s argument is that the trial judge demonstrated bias when she denied his modification petition. However, bias is not proven from judicial rulings alone. *See id.* Miller’s argument therefore fails.