

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

Micah Perryman,
Appellant,

v.

State of Indiana,
Appellee.

June 9, 2022

Court of Appeals Case No.
22A-CR-128

Appeal from the Elkhart Superior
Court

The Honorable Teresa L. Cataldo,
Judge

Trial Court Cause No.
20D03-0305-FA-97

Brown, Judge.

[1] Micah Perryman appeals the trial court's December 5, 2021 order following his motion for modification of sentence. We affirm.

Facts and Procedural History

[2] On May 5, 2003, the State charged Perryman with: Count I, dealing in cocaine or a narcotic drug as a class A felony; Count II, dealing in cocaine or a narcotic drug as a class B felony; Count III, maintaining a common nuisance as a class D felony; and Count IV, possession of marijuana as a class A misdemeanor. On March 31, 2006, a jury found Perryman guilty of dealing in cocaine or a narcotic drug as a class A felony and possession of marijuana as a class A misdemeanor. In May 2006, the court sentenced him to an aggregate sentence of fifty years.

[3] On October 24, 2014, Perryman filed a petition for modification of sentence. On November 18, 2014, the court denied the petition. On December 22, 2014, Perryman filed a motion to reconsider his motion for modification. On December 31, 2014, the court denied the motion.

[4] On July 11, 2016, Perryman filed a petition for modification of sentence. On July 18, 2016, the court reviewed the petition and ordered a progress report from the Miami Correctional Facility. On August 4, 2016, the court entered an order denying the petition. On August 17, 2016, Perryman filed a request for permission to amend his petition for modification of sentence, and the court denied the request. On September 9, 2016, Perryman filed a motion to

reconsider the order denying his motion for modification of sentence, and the court denied the motion.

[5] On March 18, 2019, Perryman filed a petition for modification of sentence. A chronological case summary (“CCS”) entry dated March 25, 2019, states that the court reviewed the petition and the CCS and found that it was “without jurisdiction to entertain any further requests pursuant to state statute.”

Appellant’s Appendix Volume II at 25. On April 17, 2019, Perryman filed a motion to reconsider its findings. On May 2, 2019, the court entered an order denying the motion.

[6] On March 23, 2020, Perryman filed a petition for modification of sentence. On March 30, 2020, the court found it lacked jurisdiction to entertain Perryman’s motion. On April 13, 2020, Perryman filed a motion to reconsider. On April 15, 2020, the court denied Perryman’s motion.

[7] On November 18, 2021, Perryman filed a motion for modification of sentence. On December 5, 2021, the court entered an order which stated:

Court, having reviewed Motion for Modification of Sentence filed by Defendant herein on November 18, 2021 and having also reviewed the [CCS] maintained with respect to this cause, finds that this is the fifth Motion for Modification of Sentence Defendant has filed. Court notified Defendant in an entry on March 25, 2019 that the Court lacked jurisdiction to entertain any further Motions for Modification pursuant to state statute. On March 30, 2020 Court notified Defendant again that it lacked jurisdiction to entertain any Motions for Modification in accordance with Indiana Law. Court hereby admonishes Defendant that any further Motions for Modifications of

Sentence filed in this case will be considered abusive filings, as the Defendant has been told numerous times that the Court lacks jurisdiction to entertain any Motions for Modification in this cause. If further Motions for Modification of Sentence are filed, Court will depend on the remedy relied on in Zavodnik vs. Harper, 17 N.E.3d 259[, (Ind. 2014),] and possibly take away a portion of Defendant’s good time credit.

December 5, 2021 Order.

Discussion

[8] Before discussing Perryman’s allegations of error, we observe that he is proceeding *pro se* and that such litigants are held to the same standard as trained counsel. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Perryman argues that Ind. Code § 35-38-1-17 and Pub. L. No. 164-2015, § 2 indicate that the two attempts to modify a non-violent sentence without the prosecutor’s approval or consent applies only to motions to modify sentences filed after May 5, 2015. He asserts that he had only one petition entertained since 2015 because those filed in 2019, 2020, and 2021 “were all unheard because the trial court claimed it lacked jurisdiction.” Appellant’s Brief at 6. The State argues that Perryman “has filed at least two motions for modification after the 2015 changes to the modification statute became effective in [sic] May 5, 2015, which were both denied,” and “[t]herefore, the trial court properly denied his 2021 motion for modification that was made without the prosecutor’s approval.” Appellee’s Brief at 7. It also states “[t]he statute does not distinguish between how and on what basis the two prior motions filed

without prosecutorial approval were denied” and “any subsequent motion should have been filed with the prosecutor’s approval.” *Id.* at 8.

[9] Generally, we review a trial court’s decision to modify a sentence only for abuse of discretion. *Gardiner v. State*, 928 N.E.2d 194, 196 (Ind. 2010). We review de novo matters of statutory interpretation because they present pure questions of law. *Id.* To the extent resolution of this issue requires that we interpret Ind. Code § 35-38-1-17, we note that “[i]n construing statutes, our primary goal is to determine the legislature’s intent.” *D.P. v. State*, 151 N.E.3d 1210, 1216 (Ind. 2020). “[T]o ascertain that intent, we must first look to the statutes’ language.” *Id.* “If the language is clear and unambiguous, we give effect to its plain and ordinary meaning and cannot resort to judicial construction.” *Id.*

[10] Ind. Code § 35-38-1-17 addresses the reduction or suspension of a sentence. At the time Perryman filed his July 11, 2016 petition for modification of sentence, March 18, 2019 petition for modification of sentence, March 23, 2020 petition for modification of sentence, and November 18, 2021 motion for modification of sentence, Ind. Code § 35-38-1-17(j) provided:

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] To the extent Perryman argues that only one of his petitions was entertained since 2015 because those filed in 2019, 2020, and 2021 “were all unheard because the trial court claimed it lacked jurisdiction,” Appellant’s Brief at 6, we note that Ind. Code § 35-38-1-17(j) provides that a convicted person “may *file* a petition for sentence modification . . . *a maximum of two (2) times* during any consecutive period of incarceration . . . without the consent of the prosecuting attorney.” (Emphases added). We also note that Perryman did not appeal or pursue an appeal of the trial court’s order denying his petition for modification of sentence filed on July 11, 2016, or the bases for the trial court’s orders following his subsequent petitions for modification of sentence filed on March 18, 2019, and March 23, 2020.¹ Nor did Perryman have the consent of the prosecuting attorney to file his November 18, 2021 motion for modification of sentence. Under the circumstances, we cannot say that reversal is warranted.

[12] For the foregoing reasons, we affirm the trial court’s order.

[13] Affirmed.

¹ On June 3, 2019, Perryman filed a notice of appeal in the trial court of the court’s March 25, 2019 order. On May 26, 2020, he filed a notice of appeal in the trial court of the court’s April 15, 2020 order. On May 19, 2020, he filed a notice of appeal of the court’s April 15, 2020 order with the Clerk of the Indiana Supreme Court and Court of Appeals and this notice was assigned an appellate cause number of 20A-CR-1112 (“Cause No. 1112”). On June 24, 2021, this Court entered an order in Cause No. 1112 observing that a notice of completion of clerk’s record was served on July 13, 2020, noting that Perryman had not filed an appellant’s brief and nothing had been done in furtherance of the appeal, and dismissing the appeal with prejudice.

[14] Mathias, J., and Molter, J., concur.