MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Aaron M. Brown,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

July 30, 2024

Court of Appeals Case No.
24A-CR-325

Appeal from the DeKalb Circuit Court

The Honorable Kurt Bentley Grimm, Judge

Trial Court Cause No.
17C01-9402-CF-8

Memorandum Decision by Judge Pyle
Judges May and Brown concur.

Pyle, Judge.

Statement of the Case

[1] Aaron M. Brown ("Brown") appeals the trial court's denial of his petition to modify his sentence. He argues that the trial court abused its discretion when it denied his petition. Concluding that the trial court did not abuse its discretion when it denied Brown's petition, we affirm the trial court's judgment.

[2] We affirm.

Issue

> Whether the trial court abused its discretion when it denied Brown's petition to modify his sentence.

Facts

[3] We set forth the facts in Brown's direct appeal of his two 1994 murder convictions as follows:

> On February 7, 1994, Brown was charged by information with the murders of Elizabeth Grueb, his biological mother, and Jeffrey Grueb, his step-father. He pled guilty without a plea agreement in September of 1994. Following a guilty plea hearing the trial court entered judgment on the plea. The evidence reveals that in the early morning hours of February 6, 1994, Brown, then 16-years old, lay in wait for his parents to return home from a party, and upon their arrival, murdered them with a shotgun.

Brown v. State, 659 N.E.2d 671, 672 (Ind. Ct. App. 1995), *trans. denied*.

[4] Following a lengthy December 1994 sentencing hearing, the trial court found the following aggravating factors: (1) based upon the seriousness of the offenses, Brown was in need of correctional or rehabilitative treatment that could best be provided by a penal facility; (2) Brown had been and remained the member of a gang; (3) one of the murder victims was Brown's own mother; (4) Brown committed the murders while lying in wait and after planning them for several days; (5) Brown did not exhibit or express remorse for killing his stepfather; and (6) Brown stated in the pre-sentence investigation process that he would commit another murder under certain unspecified circumstances.

[5] In addition, the trial court found the following mitigating factors: (1) Brown had no prior criminal history; (2) Brown was of youthful age; and (3) Brown turned himself in to the authorities shortly after committing the murders. After finding that the aggravating factors outweighed the mitigating factors, the trial court sentenced Brown to fifty (50) years for each murder conviction and ordered the sentences to run consecutively to each other for an aggregate sentence of 100 years.

[6] On direct appeal, Brown challenged his sentence. He argued that: (1) he was "deprived of his privilege against self-incrimination when the trial court used unwarned statements made by Brown during the preparation of the pre-sentence report" as a ground for the imposition for enhanced consecutive sentences; and (2) his sentence was manifestly unreasonable. *Id*. at 672. Regarding the manifest unreasonableness of his sentence, Brown argued that the trial court had not sufficiently articulated several of the aggravating

circumstances and had overlooked or assigned inadequate weight to significant mitigating circumstances. In addition, Brown argued that the trial court had "overall failed to contemplate [his] general character when structuring his sentence." *Id*. at 674.

[7] When reviewing Brown's sentence, we stated as follows:

> It is readily apparent to us, from the sentencing statement made on the record coupled with the sentencing order and sheer volume of pre-sentence material, that the trial court put considerable thought and deliberation into the length and structure of Brown's sentence. It is further evident that the trial court exhibited heartfelt compassion for Brown, the circumstances under which he found himself, and the unfortunate struggles throughout his childhood and adolescence. . . . After reciting the factors which the court considered in mitigation, and specifically noting Brown's attitude of cooperation, the court advised Brown as follows: "Obviously, that's in your favor and your sentences will not be as extreme because of that fact. So, I'm giving you something for that and you deserve it by being cooperative after it happened." (R. 619).

Brown, 659 N.E.2d at 675. After concluding that this was "not a case in which the court failed to consider an established mitigating factor or relied upon aggravators in a conclusory fashion[,]" we affirmed Brown's 100-year aggregate sentence. *Id*.

[8] In May 2000, Brown filed a pro se petition for post-conviction relief wherein he argued that his trial counsel was ineffective for failing to advise him of possible

defenses. The post-conviction court denied Brown's petition, and Brown did not appeal the denial.

[9] In November 2017, this Court granted Brown permission to file a successive petition for post-conviction relief. Brown filed his successive petition in November 2017 and argued that he was entitled to relief pursuant to *Miller v. Alabama*, 567 U.S. 460, 489 (2012), wherein the United States Supreme Court held that mandatory life-without-parole sentences for juvenile offenders are unconstitutional. Following a hearing, the post-conviction court granted the State's motion for summary disposition in September 2018.

[10] Brown appealed and argued that the trial court had failed to properly consider his youth at the original sentencing hearing and that, pursuant to *Miller*, he was entitled to a new sentencing hearing. The State responded that Brown did not fall within the category of offenders contemplated by *Miller* because he had received a *Miller*-compliant sentencing hearing and was eligible for parole at the age of sixty-two. We affirmed the trial court's grant of the State's motion for summary disposition. *Brown v. State* 131 N.E.3d 740, 745 (Ind. Ct. App. 2019), *trans. denied, cert. denied*.

[11] In July 2023, Brown filed a pro se motion for modification of sentence. In this motion, Brown stated that while incarcerated, he had successfully completed his G.E.D. Brown further stated that during his incarceration, he had earned a Bachelor of General Studies Degree from Ball State University and a Master of Arts Degree from California State University. Brown also listed nearly two

pages of certificates that he had received from completing Department of Correction ("DOC") "Reformative Programs[.]" (App. Vol. 2 at 22). In addition, Brown stated that he had been married since January 2011 and that his wife would assist him in transitioning back into society. In support of his motion, Brown also submitted several letters from family, friends, and members of the community. Also, in this motion, Brown stated that his earliest prison release date was February 29, 2040.

[12] In August 2023, the trial court requested that the DOC prepare and file a report concerning Brown's conduct while incarcerated ("the report"). DOC filed the report in September 2023. The report identified programs that Brown had completed as well as his employment while incarcerated. In addition, the report listed forty-three conduct violations that Brown was alleged to have committed between 1995 and 2011.[1]

[13] In January 2024, without holding a hearing, the trial court issued an order denying Brown's motion.[2] Also, in January 2024, Brown filed a motion to correct error, which the trial court denied. In its order denying Brown's motion to correct error, the trial court stated that it had taken "a long and careful

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[1] The report also included a conduct violation that Brown was alleged to have committed in 2023. However, that violation was subsequently dismissed.

[2] "[I]t is well-established that, under the modification statute, a trial court is only required to conduct a hearing if it has made a preliminary decision to modify the sentence at issue." *Newman v. State*, 177 N.E.3d 888, 891 (Ind. Ct. App. 2021), *trans. denied*. Here, where the trial court never indicated that it was considering a sentence modification, the trial court was not required to hold a hearing on Brown's petition. *See id*.

review of the matter" before issuing the order denying Brown's petition. (App. Vol. 2 at 191).

[14] Brown now appeals.

Decision

[15] Brown argues that the trial court abused its discretion when it denied his petition to modify his sentence. We disagree.

[16] As an initial matter, we note that Brown 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*.

[17] We now turn to Brown's argument. A trial court generally has no authority over a defendant after sentencing. *Johnson v. State*, 36 N.E.3d 1130, 1133 (Ind. Ct. App. 2015), *trans. denied*. An exception to this general rule is set forth in INDIANA CODE § 35-38-1-17, which gives trial courts authority to modify a previously imposed sentence under certain circumstances. *Id*.

[18] Brown filed his motion pursuant to INDIANA CODE § 35-38-1-17(n), which became effective July 1, 2023, and which provides as follows:

> (n) A person sentenced in a criminal court having jurisdiction over an offense committed when the person was less than eighteen (18) years of age may file an additional petition for

> sentence modification under this section without the consent of the prosecuting attorney if the person has served at least:
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> * * * * *
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> (2) twenty (20) years of the person's sentence, if the person is serving a sentence for murder.

[19] This statutory provision authorized Brown to file his petition to modify his sentence. However, the provision did not require the trial court to grant Brown's petition. Rather, trial courts have broad discretion to modify a sentence, and we review a trial court's denial of a petition to modify a sentence for an abuse of that discretion. *Newman*, 177 N.E.3d at 891. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Id*.

[20] Here, Brown specifically argues that the trial court abused its discretion when it denied his petition because "[d]uring thirty years of incarceration [he] has shown growth in character, psychological health and well-being as well as not only collecting an extraordinary number of certificates, Degrees and Certifications but employing them to help others around him." (Brown's Br. 17). However, this Court has previously explained "that a trial court does not abuse its discretion in declining to modify a defendant's sentence even where there is plentiful evidence presented of his efforts at rehabilitation." *Newman*, 177 N.E.3d at 891. *See also Banks v. State*, 847 N.E.2d 1050, 1053 (Ind. Ct. App. 2006) (affirming the denial of Banks' petition for sentence modification despite

his contention that all the evidence in the record supported it), *trans. denied*; *Catt v. State*, 749 N.E.2d 633, 643-44 (Ind. Ct. App. 2001) (affirming the denial of Catt's petition for sentence modification even where Catt had participated in several rehabilitative programs, was employed in prison, and had made restitution), *trans. denied*; *Marshall v. State*, 563 N.E.2d 1341, 1343 (Ind. Ct. App. 1990) (explaining that Marshall's evidence of his remorsefulness, his good conduct and rehabilitative efforts while incarcerated, and his employment opportunity if he were to be released did not inevitably lead to the conclusion that the trial court had abused its discretion in declining to modify Marshall's sentences), *trans. denied*.

[21] In addition, this Court has previously held, when considering a previous statute allowing for sentence modification, that "[t]he heinousness of a person's crime alone can serve as the basis for denying a sentence reduction[.]" *Myers v. State*, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999). Here, Brown murdered his mother and stepfather. Further, Brown committed the murders with a shotgun while lying in wait after planning the murders for several days. In addition, Brown, who expressed no remorse for killing his stepfather, stated during the pre-sentence investigation process that he would commit another murder under certain unspecified circumstances. We further note that in its order denying Brown's motion to correct error, the trial court stated that it had taken "a long and careful review of the matter" before issuing the order denying Brown's petition to modify his sentence. (App. Vol. 2 at 191).

[22] Given the trial court's careful review of this matter, the nature of Brown's crimes, and the fact that positive achievements and rehabilitative efforts do not require the trial court to grant a modification, we conclude that the trial court did not abuse its discretion in denying Brown's petition for sentence modification.[3]

[23] Affirmed.

May, J., and Brown, J., concur.

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[3] We note that Brown directed us to *Banks v. State*, 228 N.E.3d 528 (Ind. Ct. App. 2024), in support of his argument that the trial court abused its discretion when it denied his motion to modify his sentence. However, neither the result nor the rationale in *Banks* supports Brown's argument.

First, the *Banks* case was a direct appeal wherein Banks, who was sixteen years old when he committed four murders, argued that his sentence was inappropriate. We concluded that Banks' 220-year sentence was inappropriate and reduced it to 135 years. *Id*. at 534. Sentence review on direct appeal pursuant to Indiana Appellate Rule 7(B) and a sentencing modification "are separate avenues of relief[.]" *Hawkins v. State*, 951 N.E.2d 597, 600 (Ind. Ct. App. 2011), *trans. denied*. Specifically, sentence review on direct appeal pursuant to Indiana Appellate Rule 7(B) addresses whether the sentence is inappropriate in light of the facts available at the time of sentencing. *Id*. at 599. On the other hand, a sentence modification allows the court to take into account additional circumstances that might merit the reduction or suspension of a sentence. *Id*. Accordingly, our determination that Banks' sentence was inappropriate does not compel a determination that the trial court abused its discretion when it denied Brown's petition to modify his sentence.

Second, our rationale in *Banks* does not support Brown's argument. In *Banks*, we noted that "[b]etween 2014 and 2020, the Indiana Supreme Court reduced the life or de facto life sentences of at least five juveniles convicted of murder given their young ages and the emerging scientific research on adolescent brain development . . . so the defendants would be eligible for release in their fifties or sixties, giving them reasonable hope for rehabilitation and some life outside prison." *Banks*, 228 N.E.3d at 529-30. We further explained that "reducing [Banks]'s sentence to 135 years now makes it more likely that, with good behavior, a trial court would grant a modification under Section 35-38-1-17(n) and reduce his sentence to a point that would allow for some life outside of prison." *Id*. at 539. Here, however, Brown 's earliest prison release date is in February 2040, which will allow Brown some life outside of prison even without a sentence modification.

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