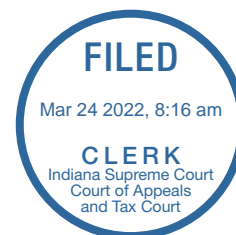


## MEMORANDUM DECISION

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

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Quantae A. Johnson,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff,*

March 24, 2022

Court of Appeals Case No.  
21A-CR-441

Appeal from the Hamilton  
Superior Court

The Honorable Jonathan M.  
Brown, Judge

Trial Court Cause No.  
29D02-1608-F6-6740

**Robb, Judge.**

## Case Summary and Issue

- [1] Quantae Johnson entered a plea agreement which provided for a sentence to be partially executed, partially served in community corrections, and partially suspended to probation under special conditions, including that he testify against a co-defendant. When Johnson refused to testify, his community corrections placement and probation were revoked, and he was ordered to serve his sentence in the Indiana Department of Correction (“DOC”). Johnson filed a motion to modify his sentence which the State opposed and which the trial court denied. Johnson now appeals, raising the sole issue of whether the trial court abused its discretion in denying his motion to modify. Concluding the trial court did not abuse its discretion, we affirm.

## Facts and Procedural History

- [2] In 2016, the State charged Johnson with Level 5 felony neglect of a dependent and two counts of Level 6 felony neglect of a dependent for withholding food from two of his children resulting in their severe malnutrition. *See Johnson v. State*, No. 18A-CR-2836 at \*1, ¶ 2 (Ind. Ct. App. July 16, 2019). Johnson’s wife was also charged in connection with these events. *See id.*
- [3] In November 2017, Johnson and the State entered into a plea agreement pursuant to which Johnson would plead guilty to Level 5 felony neglect of a dependent and one count of Level 6 felony neglect of a dependent in exchange for the dismissal of the other count of Level 6 felony neglect of a dependent.

The agreed-to sentences were set forth in detail and were to be served consecutively. Finally, the plea agreement set forth “special conditions” of Johnson’s community corrections placement and probation, including Condition 8 that required he “testify truthfully” in the State’s case against his wife. Appellant’s Appendix, Volume 2 at 152. The trial court accepted the plea agreement and sentenced Johnson in accordance with its terms: for the Level 6 felony conviction he was sentenced to 910 days with forty days served in the DOC and 870 days suspended to probation, and for the Level 5 felony conviction he was sentenced to a consecutive term of six years, with four years and three months suspended to probation and the executed portion of the sentence to be served on home detention. *See id.* at 158-60. Condition 8 was included in the terms outlined in the order of probation and in the community corrections electronic monitoring program contract. *See id.* at 166, 170.

[4] A jury trial was held in Johnson’s wife’s case in May 2018, but Johnson refused to testify. Thereafter, a notice of non-compliance with community corrections and a notice of probation violation were filed against Johnson. Following a hearing on October 30, 2018, the trial court found that Johnson violated the terms and conditions of both his community corrections placement and his probation and ordered Johnson to “serve 2,685 days in the [DOC], less credit time [with] 1 year suspended to 1 year probation under all of the terms previously ordered.” *Id.* at 51.

[5] On August 24, 2020, Johnson filed a petition for compassionate release alleging he is a transplant recipient with a weakened immune system putting him at a

high risk of contracting COVID-19. He also alleged that the crimes he committed were the result of circumstances unlikely to reoccur because he has no other history of criminal offenses, his parental rights have been terminated, and he has responded affirmatively to incarceration. The trial court treated this as a motion for modification of sentence, ordered DOC to conduct an evaluation of Johnson and file a progress report with the court, and set the petition for a hearing on October 16. On September 18, Johnson filed an emergency motion seeking an earlier hearing, alleging his wife was in poor health and her condition was deteriorating due to lack of familial support. The trial court accelerated the hearing to September 24 but following the hearing, denied Johnson's request for immediate release. The trial court took the request for modification under advisement and set another hearing for December.

[6] On November 10, Johnson filed another emergency motion seeking immediate relief, this time alleging he had recently contracted COVID-19 and that keeping him, a non-violent offender, in the DOC would "continue to endanger his health and life." *Id.* at 91. The trial court held the previously scheduled hearing on December 4, noted the State did not consent to the motion for modification, requested DOC prepare another progress report, and reset the hearing for February 18, 2021.

[7] At the February 18 hearing, the State continued to object to a modification:

I went into it last time, but essentially the mercy and the grace that the Defendant is seeking from the Court was not afforded to

the victims in this case. On the underlying offense, also on the violation, Judge, he did not testify against the co-defendant, which was part of the plea agreement, which sincerely hampers the administration of justice. . . . Based on . . . the severity of the crime . . . and the violation of probation being very severe, the State does object . . . to the Defendant’s motion to modify [because it] would undermine the seriousness of the offense and the violations.

Transcript, Volume II at 5. Johnson asserted that the State’s claim that his failure to testify hindered the administration of justice “has no validation” because his wife was convicted even without his testimony. *Id.* He also asserted that his DOC progress report “speaks for itself[.]” *Id.* at 6.<sup>1</sup> “I haven’t been sitting in here idle. I’ve been keeping myself busy. I’ve been improving myself as an individual and as a father.” *Id.*

[8] The trial court first noted that Johnson had received a more lenient sentence in exchange for his promise to testify truthfully at his wife’s trial and that his failure to comply with that term of the plea agreement when the ability to do so was completely within his control hampered justice as a matter of public policy regardless of whether his wife was convicted even without his testimony. The trial court also noted that it had reviewed Johnson’s progress report and that it could understand that Johnson “feel[s] like you could – you should be out.” *Id.*

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<sup>1</sup> The progress report shows that Johnson completed several programs and received two ninety-day time reductions, moving his original projected release date of September 9, 2022 to March 13, 2022. *See* Appellant’s App., Vol. 2 at 99. The report also shows that he has been free of conduct violations, has no service referrals, and would have a place to reside if released. *Id.* at 99-100.

at 8. But “in light of the circumstances [and] in light of the fact that the State is objecting to [the] modification request,” the trial court denied the request for modification and ordered that Johnson complete his sentence as previously ordered. *Id.* Johnson now appeals.

## Discussion and Decision

- [9] Sentence modifications are governed by Indiana Code section 35-38-1-17. Except under conditions not relevant here, at any time after a convicted person begins serving his sentence and the court obtains a report from the DOC concerning his conduct while imprisoned, “the court *may* reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing.” Ind. Code § 35-38-1-17(e) (emphasis added).<sup>2</sup>
- [10] Therefore, we review a trial court’s decision regarding modification of a sentence for an abuse of discretion. *Johnson v. State*, 36 N.E.3d 1130, 1133 (Ind. Ct. App. 2015), *trans. denied*. An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court or when the court misinterprets the law. *Id.*

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<sup>2</sup> Indiana Code section 35-38-1-17(e) goes on to say, “However, if the convicted person was sentenced under the terms of a plea agreement, the court may not, without the consent of the prosecuting attorney, reduce or suspend the sentence and impose a sentence not authorized by the plea agreement.” Thus, the sentencing parameters of a plea agreement continue to bind a trial court during subsequent modification proceedings. Because Johnson’s plea agreement had called for a suspended sentence, it does not appear the prosecutor’s consent would have been required under this provision had the trial court chosen to suspend part or all of Johnson’s sentence pursuant to his motion.

[11] Johnson argues the trial court abused its discretion when it denied his request for a sentence modification because he is “a non-violent offender with a conformity driven progress report and no previous criminal history.” Appellant’s Brief at 7. Johnson cites *Woodford v. State*, 58 N.E.3d 282 (Ind. Ct. App. 2016), in support of his argument, claiming this court remanded that case for further review where the trial court denied a sentence modification but the defendant had demonstrated rehabilitative efforts and had remained free of conduct violations while incarcerated. See Appellant’s Br. at 15. The court in *Woodford* did remand to the trial court for further consideration, but it was not *because* of the defendant’s evidence. In fact, the court did not consider the merits of the defendant’s motion to modify at all. Instead, we found that the trial court may have evaluated the motion under an older version of the modification statute and remanded for the trial court to consider the motion under the revised version. *Woodford*, 58 N.E.3d at 288. Thus, *Woodford* does not support Johnson’s position.

[12] Johnson gave several reasons purportedly supporting his request for a sentence modification. As for his high-risk COVID-19 status as a transplant recipient, we have recently rejected a similar reason for modifying a sentence. In *Merkel v. State*, the defendant argued that the trial court abused its discretion in denying him a sentence modification because he was an older diabetic at higher risk of contracting COVID-19. 160 N.E.3d 1139, 1141 (Ind. Ct. App. 2020). We disagreed, noting that “his placement in a higher-risk category will remain even if he were released into the community.” *Id.* The same is true of Johnson,

whose status as a transplant recipient places him at higher risk regardless of his placement. Moreover, Johnson contracted COVID-19 during these proceedings, and he has not alleged that he did not receive adequate care during his illness.

[13] Johnson’s evidence of his good conduct and rehabilitative efforts while incarcerated does not inevitably lead to the conclusion that the trial court abused its discretion. Although Johnson had no criminal history prior to these offenses, the nature of these offenses was ongoing and therefore Johnson was not living a law-abiding life in the months or years leading up to being charged in this case. Further, Johnson does not acknowledge that pursuant to the plea agreement, a large portion of his sentence was suspended<sup>3</sup> and he was given the opportunity to serve the remainder on home detention rather than in prison. It was only when he failed to abide by a central term of his agreement that he was incarcerated. In other words, his incarceration in the DOC was the result of circumstances solely within his control. And despite his assertions that he has “attained the Court’s desired goal of rehabilitation” and that his “character and attitudes” make it unlikely he will commit another crime, Appellant’s App., Vol. 2 at 76-77, Johnson fails to demonstrate that he has any remorse for the heinous crimes he inflicted on two of his children or for his failure to abide by the promise he made when reaching a favorable plea agreement with the State.

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<sup>3</sup> Of the eight and one-half-year sentence Johnson received, approximately six years and eight months were suspended to probation.



[14] Revisions to Indiana Code section 35-38-1-17 in 2015 “gave courts greater opportunity to evaluate the rehabilitative efforts of long-incarcerated but nonviolent offenders and determine whether scarce prison resources could be better used.” *Woodford*, 58 N.E.3d at 286. Although the process of rehabilitation may have started, the trial court was entitled to evaluate Johnson’s reasons for seeking modification and balance them against all the facts before it.<sup>4</sup> We cannot say the trial court abused its discretion in determining that modification was not warranted in Johnson’s case.<sup>5</sup>

## Conclusion

[15] The trial court did not abuse its discretion in denying Johnson’s motion to modify his sentence. The judgment of the trial court is therefore affirmed.

[16] Affirmed.

Riley, J., and Molter, J., concur.

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<sup>4</sup> Johnson argues the trial court abused its discretion because it allowed the State’s objection to influence its decision. *See* Appellant’s Br. at 16. The trial court did acknowledge the State’s objection, but there is no indication it based its decision solely on that objection and it was certainly entitled to consider the State’s position in evaluating the merits of Johnson’s motion.

<sup>5</sup> Johnson also argues that the trial court did not follow the proper sentencing procedure when revoking his probation. *See* Appellant’s Br. at 14-15. The probation revocation order was issued in October 2018, and Johnson may not collaterally attack it in this proceeding.