

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Sean W. Clover,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 27, 2023

Court of Appeals Case No.
22A-CR-2252

Appeal from the Bartholomew
Superior Court

The Honorable James D. Worton,
Judge

Trial Court Cause No.
03D01-1002-FA-263

Memorandum Decision by Judge Riley
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Sean W. Clover (Clover), appeals the trial court's denial of his petition to modify his sentence.

[2] We affirm.

ISSUE

[3] Clover presents this court with one issue on appeal, which we restate as:
Whether the trial court abused its discretion when it denied Clover's petition to modify his sentence.

FACTS AND PROCEDURAL HISTORY

[4] On September 14, 2010, Clover was convicted of two Counts of dealing cocaine, as Class A felonies, and was sentenced to concurrent forty-year sentences in the Department of Correction (DOC) on October 27, 2010. On November 1, 2010, Clover filed a notice of appeal. On August 26, 2011, we affirmed his convictions and sentence on direct appeal.

[5] On October 28, 2011, Clover filed a petition to modify his sentence. On November 3, 2011, the trial court concluded that the appeal of Clover's convictions and sentence was included in a petition "to transfer still pending in the court of appeals" and "denied" Clover's petition for lack of jurisdiction. (Appellant's App. Vol. II, p. 5). On November 15, 2015, Clover filed a motion for placement in the Purposeful Incarceration program. The State objected and the trial court denied Clover's motion on December 15, 2015. Subsequently,

the post-conviction court denied Clover's request for post-conviction relief, and we affirmed that decision on November 17, 2016.

[6] On August 22, 2019, Clover filed a motion to modify his sentence, alleging that he was entitled to a sentence modification because he (1) had obtained his G.E.D.; (2) had participated in the P.L.U.S. program and its graduate program; (3) had participated in the IN2Work/DOL program and obtained an apprenticeship certification; (4) had participated in the compassionate companion program; and (5) had maintained employment in the prison. The State opposed the modification and referred to Clover's "lengthy criminal record," which included a history of committing crimes while on bond or probation, as well as unsatisfactory performance of his probationary terms. (Appellee's App. Vol. II, pp. 7-8). The DOC filed a report on Clover's conduct. On September 5, 2019, the trial court denied Clover's motion and thereafter denied Clover's motion to reconsider on October 5, 2019.

[7] Three years later, on August 19, 2022, Clover filed a second motion to modify his sentence, alleging the same grounds for modification as in his 2019 petition. The trial court obtained a report from the DOC and the State filed a response, noting that the trial court had twice denied Clover's petitions for sentence modification in 2011 and 2019. On September 13, 2022, the trial court summarily denied Clover's petition for modification of sentence.

[8] Clover now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

- [9] Clover contends that the trial court abused its discretion when it denied his petition to modify his sentence. As a general rule, a trial court has no authority over a criminal defendant after sentencing. *State v. Harper*, 8 N.E.3d 694, 696 (Ind. 2014). Indiana Code section 35-38-1-17(e) represents an exception to that general rule, as the Legislature has provided that a trial court “may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing” after a defendant has begun serving his sentence and the trial court has obtained a DOC progress report. We review a trial court’s denial of a petition to modify a sentence for an abuse of discretion. *Schmitt v. State*, 108 N.E.3d 423, 425 (Ind. Ct. App. 2018). Trial courts have broad discretion to modify a sentence, and an abuse of discretion occurs only where the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Merkel v. State*, 160 N.E.3d 1139, 1141 (Ind. Ct. App. 2020).
- [10] Indiana Code section 35-38-1-17 governs the reduction or suspension of a sentence for a person who committed a crime or was sentenced prior to July 1, 2014. The statute provides that, with exceptions for credit-restricted or violent felons—which Clover was not categorized as—defendants who have begun serving a sentence can ask a trial court to modify the sentence, subject to additional restrictions that depend on the sentence having been originally directed by the terms of a plea agreement. Ind. Code § 35-38-1-17(a)-(e). The prosecuting attorney’s consent is not required to modify a defendant’s sentence.

I.C. § 35-38-1-17(j). Pursuant to the terms of the statute, defendants cannot ask for sentence modifications more than once in any 365-day period, and defendants are limited in requesting a modification to “a maximum of two . . . times during any consecutive period of incarceration.” I.C. § 35-38-1-17(j). A trial court can deny a petition to modify a sentence without a hearing and without written findings and conclusions. *Merkel*, 160 N.E.3d at 1141.

[11] Clover contends that the trial court abused its discretion by relying on the State’s assertion that Clover had already twice petitioned the court for a sentence modification, and therefore was prevented from petitioning again under the two-petition limit of Indiana Code section 35-38-1-17(j). In support of his argument, Clover argues that while he is subject to this limitation, his 2011 modification petition cannot count toward the limit. We agree. We note that the trial court did not rule on Clover’s 2011 modification petition as it did not have jurisdiction over Clover’s motion. Accordingly, contrary to the State’s argument in its response to Clover’s petition,¹ Clover’s current petition for modification of sentence was the second modification request made pursuant to the two-petition limit of the statute. *See* I.C. § 35-38-1-17(j).

[12] Clover also claims that the trial court abused its discretion by denying his petition “under the belief that it needed the states [sic] consent.” (Appellant’s Br. p. 8). However, Clover is mistaken. Even though the trial court requested

¹ It appears the State has abandoned this argument on appeal.

the State to respond to Clover's request for modification of his sentence, the trial court did not ask for the State's consent, nor did the court need the State's consent to the sentence modification prior to ruling on Clover's petition. *See Woodford v. State*, 58 N.E.3d 282, 287 (Ind. Ct. App. 2016) (prosecutorial consent not required if number of petitions filed since 2015 amendment has not exceeded two).

[13] Clover's current petition to modify his sentence listed the identical accomplishments he had brought to the trial court's attention in his— unsuccessful—2019 motion, most notably the obtaining of a G.E.D. certificate, maintaining prison employment, and participating in various counseling opportunities and vocational training and apprenticeship programs. As in 2019, Clover maintains that his progress and participation in rehabilitation programs merited modification. However, we have observed that “the mere fact that the process of rehabilitation, the purpose of incarceration, may have started, does not compel a reduction or other modification [of a defendant's] sentence.” *Marshall v. State*, 563 N.E.2d 1341, 1343-44 (Ind. Ct. App. 1990) (upholding the denial of a sentence modification despite evidence of Marshall's remorsefulness, good conduct and rehabilitative efforts in prison, and employment opportunities if released), *trans. denied*. *See also, Catt v. State*, 749 N.E.2d 633, 643-44 (Ind. Ct. App. 2001) (relying on *Marshall* to affirm denial of sentencing modification even where Catt had participated in several rehabilitative programs, was employed in prison, and made restitution), *trans. denied*. While Clover's rehabilitative pursuits are commendable, they do not offset Clover's

lengthy criminal record, which includes a history of committing crimes while on bond or probation and unsatisfactory performance of probationary terms, and his dual drug dealing convictions in this case for which Clover received a lenient sentence.² Accordingly, based on the record before us, we cannot say that the trial court abused its discretion by denying Clover's petition.

CONCLUSION

[14] Based on the foregoing, we hold that the trial court did not abuse its discretion by denying Clover's petition to modify his sentence.

[15] Affirmed.

[16] Bradford, J. and Weissmann, J. concur

² After being found guilty of two Counts of dealing cocaine as Class A felonies, the trial court sentenced Clover to concurrent forty-year sentences in the DOC, whereas the trial court could statutorily have imposed an aggregate sentence of 100 years in the DOC. See [I.C. § 35-50-2-4 \(2010\)](#).