



---

ATTORNEYS FOR APPELLANT

Amy E. Karozos  
Public Defender of Indiana

Meggan E. Smith  
Deputy Public Defender

ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Justin F. Roebel  
Supervising Deputy Attorney  
General  
Indianapolis, Indiana

---

IN THE  
COURT OF APPEALS OF INDIANA

---

Anthony Wampler,  
*Appellant-Petitioner,*

v.

State of Indiana,  
*Appellee-Respondent.*

April 28, 2021

Court of Appeals Case No.  
20A-PC-2043

Appeal from the Daviess Superior  
Court

The Honorable Dean A. Sobecki,  
Judge

Trial Court Cause No.  
14D01-1703-PC-285

**Pyle, Judge.**

**Statement of the Case**

[1] In this interlocutory appeal, Anthony Wampler (“Wampler”) appeals the trial court’s order granting the State’s motion to resentence Wampler for a Class B felony burglary conviction. The State filed the motion after the parties had

agreed that Wampler’s habitual offender enhancement and sentence should be vacated. Wampler specifically argues that the trial court does not have the authority to resentence him because the Indiana Supreme Court ordered a specific sentence for the burglary conviction upon remand of his direct appeal. However, we need not address Wampler’s argument because the trial court erred in granting the State’s motion to resentence Wampler for another reason. Wampler had already served his sentence for the burglary conviction and had been released from the Department of Correction (“the DOC”) before the trial court granted the State’s resentencing motion. A trial court does not have the authority to resentence a defendant who has served his sentence and been released from the DOC. In addition, it would be manifestly unfair for the trial court to call Wampler back into court and potentially resentence him to additional time for the burglary conviction when he had already served his sentence for that conviction and been released from the DOC. Accordingly, we reverse the trial court’s order granting the State’s motion to resentence Wampler.

[2] We reverse.

## **Facts**

[3] Following a bench trial in 2015, the trial court convicted Wampler of two counts of Class B felony burglary and adjudicated him to be an habitual offender. The trial court sentenced Wampler to concurrent eighteen (18) year terms on the burglary convictions, enhanced by fifteen (15) years for the

habitual offender adjudication, for an aggregate sentence of thirty-three (33) years.

[4] This Court affirmed Wampler’s sentence on direct appeal. *Wampler v. State*, 57 N.E.3d 884, 884 (Ind. Ct. App. 2016), *trans. granted*, *Wampler v. State*, 67 N.E.3d 633 (Ind. 2017). On transfer, the Indiana Supreme Court concluded that Wampler’s sentence was inappropriate and ordered that it be revised to concurrent six (6) year terms on the burglary convictions, enhanced by ten (10) years for the habitual offender adjudication, for an aggregate sentence of sixteen (16) years. *Wampler*, 67 N.E.3d at 635.

[5] In March 2017, Wampler filed a pro se petition for post-conviction relief. In April 2020, Wampler, by counsel, filed an amendment to his petition for post-conviction relief. In the amendment, Wampler argued, in relevant part, that his habitual offender adjudication and sentence enhancement should be vacated because the Court of Appeals had recently vacated one of the convictions that had supported the habitual offender adjudication. *See Wampler v. State*, No. 19A-PC-1686, 2020 WL 811656 (Ind. Ct. App. Feb. 19, 2020) (vacating Wampler’s conviction for Class D felony criminal trespass).

[6] On May 1, 2020, Wampler filed, in his post-conviction case, a motion to vacate his habitual offender adjudication and enhancement. Three days later, on May 4, 2020, the State filed a response “agree[ing] with the material facts presented by [Wampler]” and supporting Wampler’s request for relief. (App. Vol. 2 at 41).

[7] On May 6, 2020, the trial court granted Wampler’s motion to vacate his habitual offender enhancement and sentence and ordered the county clerk “to produce a new Abstract of Judgment.” (App. Vol. 2 at 42). Based upon this amended Abstract of Judgment, the DOC calculated that, without the habitual offender enhancement, Wampler would have completed his sentence for the burglary convictions on July 13, 2017. *See* Indiana Department of Correction Offender Data, <https://www.in.gov/apps/indcorrection/ofs/ofs?lname=Wampler&fname=Anthony&search1.x=0&search1.y=0> (last visited, April 16, 2021). Accordingly, the DOC immediately released Wampler.<sup>1</sup>

[8] Also on May 6, 2020, the State filed a motion, in the post-conviction case, asking the trial court to resentence Wampler for one of his burglary convictions. In support of its request, the State directed the trial court to *Coble v. State*, 523 N.E.2d 228 (Ind. 1988). In the *Coble* case, the Indiana Supreme Court explained that, following the vacation of a defendant’s habitual offender status, the trial court can properly resentence the defendant on the underlying conviction that had been enhanced as a result of the defendant’s habitual offender status. *Id.* at 229. The following day, May 7, 2020, Wampler filed an objection to the State’s motion. In his motion, Wampler argued that the facts in *Coble* were distinguishable from the facts in his case because the Indiana

---

<sup>1</sup> Wampler states that he was released “around May 6, 2020[.]” (Wampler’s Br. 15). The State does not dispute this.

Supreme Court had ordered a specific six-year sentence for each burglary conviction upon remand of Wampler's direct appeal.

[9] In August 2020, Wampler filed a brief in support of his objection to the State's motion to resentence him, and, in September 2020, the State filed a brief in support of its motion to resentence Wampler. Neither of the briefs mentioned that Wampler had served his sentence for the burglary convictions and had been released from the DOC.

[10] Shortly thereafter, in September 2020, the trial court granted the State's motion to resentence Wampler. Wampler filed a motion asking the trial court to certify its order for interlocutory appeal. Wampler's motion did not mention that Wampler had served his sentence for the burglary convictions and had been released from the DOC. The trial court granted Wampler's motion.

[11] Thereafter, Wampler filed a petition asking this Court to accept jurisdiction of his interlocutory appeal. Wampler's petition did not mention that he had served his sentence on the burglary convictions and had been released from the DOC. In December 2020, this Court's motions panel granted Wampler's petition, and Wampler now appeals.

## **Decision**

[12] Wampler argues that the trial court erred in granting the State's motion to resentence him because the Indiana Supreme Court had ordered a specific six-year sentence for each burglary conviction upon remand of Wampler's direct appeal. However, we need not address Wampler's argument because the trial

court erred in granting the State's motion to resentence Wampler for another reason.

[13] Specifically, our review of the record reveals when the trial court vacated Wampler's habitual offender status in May 2020, the trial court also ordered the county clerk to issue an amended Abstract of Judgment. Trial courts use the Abstract of Judgment to convey the final judgment to the receiving authority. *Robinson v. State*, 199 N.E.2d 1202, 1204 (Ind. Ct. App. 2003). Based upon this amended Abstract of Judgment, the DOC, the receiving authority in this case, calculated that, without the habitual offender enhancement, Wampler would have completed his sentence for the burglary convictions on July 13, 2017. Accordingly, the DOC immediately released Wampler.

[14] Because Wampler has served his sentence for the burglary convictions and has been released from the Department of Correction, the trial court had no authority to resentence him. Trial courts are limited to imposing sentences that are authorized by statute. *Wilson v. State*, 5 N.E.3d 759, 762 (Ind. 2014). There is no statute authorizing trial courts to resentence a defendant who has served his sentence and been released from the DOC.

[15] In addition, it would be manifestly unfair for the trial court to call Wampler back into court and potentially resentence him to additional time for the burglary conviction when he had already served his sentence for that conviction and been released from the DOC. Accordingly, we reverse the trial court's order granting the State's motion to resentence Wampler.

[16] Reversed.

Najam, J., and Tavitas, J., concur.