

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Donald E. Mudica III,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

January 29, 2021

Court of Appeals Case No.
20A-CR-1302

Appeal from the St. Joseph
Superior Court

The Honorable Jeffrey L. Sanford,
Judge

Trial Court Cause No.
71D03-1604-F3-26

Robb, Judge.

Case Summary and Issue

- [1] Donald Mudica III appeals from the trial court's denial of his motion to modify his sentence and raises one issue for our review: whether the trial court abused its discretion by denying Mudica's motion. Concluding it did not, we affirm.

Facts and Procedural History

- [2] On April 26, 2016, Mudica purchased heroin from an undercover police officer. Officers later discovered eighteen grams of methamphetamine and five grams of heroin in Mudica's vehicle and 440 grams of marijuana in Mudica's apartment. On April 28, the State charged Mudica with dealing in a narcotic drug, a Level 4 felony; possession of methamphetamine, a Level 3 felony; possession of a narcotic drug, a Level 5 felony; and possession of marijuana, a Class B misdemeanor.
- [3] On October 19, 2016, pursuant to a plea agreement, Mudica pleaded guilty to dealing in a narcotic drug, a Level 4 felony, and the remaining charges were dismissed. Sentencing was left to the trial court's discretion. The trial court sentenced Mudica to seven years in the Indiana Department of Correction ("DOC") with a recommendation for the purposeful incarceration program.¹ In

¹ The trial court stated, "If [Mudica] participates in and successfully completes a DOC-approved Therapeutic Community [Program], [he] may petition the Court for a sentence modification, and the Court will consider a sentence modification, giving substantial weight to the successful completion of the program." Appellant's Appendix, Volume 4 at 39.

February 2017, Mudica was admitted into Westville Correctional Facility's Therapeutic Community Program for inpatient substance abuse treatment. Mudica successfully completed the program in December 2017 with a new projected release date of January 7, 2022 and requested modification of his sentence placement.

[4] A hearing on Mudica's motion for sentence modification was held on March 6, 2018. The trial court granted Mudica's motion and ordered that he serve the remaining balance of his executed sentence at St. Joseph County Community Corrections ("SJCCC"). On March 20, Mudica began supervision in work release at SJCCC.

[5] On January 2, 2019, SJCCC informed the court that Mudica committed numerous rule violations and received multiple misconduct reports, including violations of a condition of temporary leave; possession or use of an unauthorized substance (MDMA or Ecstasy); possession of a weapon or makeshift weapon (stripped down razor blades); using profane and vulgar language toward staff; interfering with count; and unauthorized possession of food items and tobacco products. The State filed a petition to revoke Mudica's placement. A hearing on the motion was held during which Mudica admitted to the violations. The trial court ordered a supplemental pre-sentence investigation report for the sentencing hearing. Following the hearing, on March 1, 2019, the trial court accepted Mudica's admission to the violations and sentenced him to serve "the remaining balance of the previously executed 7

years . . . in the [DOC].” Appellant’s App., Vol. 3 at 148. On March 14, 2019, Mudica returned to the DOC.²

[6] On March 19, 2020, Mudica filed a motion for sentence modification claiming he has “maintained an excellent record while incarcerated and [] believes that he is a good candidate for the Upper Room, Dismas House, or Michiana Community Corrections Program.” Appellant’s App., Vol. 2 at 178. In support of his motion, Mudica stated he has ongoing health issues that are not being addressed in the DOC, he completed the Logistics for Frontline Workers course, he was removed from Time Cut programming due to the DOC’s inability to accommodate his hearing disability, and he has gainful employment upon his release, has no prior history of violent crime, has refrained from drug or alcohol use and will continue to do so after his release, and is remorseful. *See id.* at 178-79.

[7] On April 20, 2020, Mudica filed an Emergency Modification of Sentence Due to COVID-19 Pandemic alleging the DOC is not protecting its prisoners from the virus and claiming he has sores that will not heal and symptoms of late-stage cancer, making him high risk for serious illness or death from COVID-19. Mudica also filed a motion for a DOC evaluation. The trial court took Mudica’s petition under advisement and subsequently ordered the DOC to file

² In November 2019, Mudica filed a notice of appeal but failed to perfect such appeal. This court dismissed his appeal with prejudice on July 20, 2020. *See* Appellant’s App., Vol. 2 at 61.

an Offender Evaluation and Performance Report, as well as Progress Reports for programs in which Mudica participated while imprisoned.

- [8] The DOC filed its report showing that, since Mudica’s re-commitment in March 2019, he completed the Logistics and Hire Academy programs, worked several jobs, is currently assigned to work as a tutor for GED/TASC classes, and has not had any conduct violations during the incarceration. The report also indicated Mudica is “[f]ree of illness of injury[, and] physical, mental or emotional impairment[.]” *Id.* at 157. On May 4, 2020, the trial court judge recused herself and a special judge was appointed. On May 26, the trial court summarily denied Mudica’s motion for sentence modification. Mudica now appeals that order.

Discussion and Decision

I. Standard of Review

- [9] Mudica argues that the trial court erred in denying his motion to modify his sentence. We review a trial court’s decision on a motion for sentence modification for abuse of discretion, which occurs “when the trial court’s decision is clearly against the logic and effect of the facts and circumstances or it is a misinterpretation of the law.” *Newson v. State*, 86 N.E.3d 173, 174 (Ind. Ct. App. 2017), *trans. denied*.

II. Motion to Modify Sentence

[10] In general, a trial court has no authority over a defendant after sentencing. *Sargent v. State*, 158 N.E.3d 783, 785 (Ind. Ct. App. 2020). However, Indiana Code section 35-38-1-17 provides a notable exception giving trial courts authority under certain circumstances to modify a defendant's sentence after it is imposed. *Id.* Indiana Code section 35-38-1-17(e) provides:

At any time after:

(1) a convicted person begins serving the person's sentence; and

(2) the court obtains a report from the [DOC] concerning the convicted person's 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.

The trial court may deny a defendant's motion to modify his or her sentence without making written findings and conclusions. Ind. Code § 35-38-1-17(h).

A person convicted of a non-violent crime may petition for a sentence modification not more than one time in any 365-day period and a maximum of two times during any consecutive period of incarceration without the prosecutor's consent. Ind. Code § 35-38-1-17(j).

[11] Mudica argues the trial court abused its discretion by refusing to modify his sentence because the record shows he has not had any conduct violations since

being incarcerated; he has been steadily employed and tutors other inmates who are obtaining their GED; he has successfully completed various educational courses; he has been drug-free; and he is hearing impaired, suffers from other health issues, and is concerned about contracting COVID-19 while incarcerated. *See* Brief of Appellant at 12-13. Mudica contends these factors support modification of his sentence; however, we cannot conclude the trial court abused its discretion.

[12] Mudica's pre-sentence investigation and supplemental reports reveal that his criminal history began in 1991. As a juvenile, Mudica had true findings for various offenses, including truancy, auto theft, and carrying a handgun without a license. *See* Appellant's App., Vol. 4 at 53-54. And more importantly, Mudica has an extensive adult criminal history comprised of thirteen felony convictions and four misdemeanor convictions, including several drug possession convictions. Mudica has been sentenced to the DOC or jail six times and probation four times; his probation was revoked twice.

[13] Mudica committed the instant offense at age forty. He reported using cocaine on a daily basis beginning at age twenty through 2012. In 2011 and 2012, Mudica began using heroin. Around the same time, Mudica began to use methamphetamine and used it daily up until the day of the instant offense. He was prescribed Vicodin for back pain in 2015, which he began abusing. In 2015-16, he used heroin every day. And Mudica used marijuana and heroin on the day of the present offense.

[14] Mudica also reported participating in therapeutic treatment in the DOC in the past, as well as other substance abuse classes during incarceration. Despite some treatment, Mudica has continued to engage in a pattern of substance abuse and committed the instant offense while he was on probation for another offense. As a result, Mudica was sentenced to seven years in the DOC. After successfully completing the purposeful incarceration therapeutic community program, Mudica filed his first motion to modify his sentence, which was granted. The trial court placed him in work release at SJCCC in March 2018. However, after multiple violations and misconduct reports, Mudica's placement was revoked and he returned to the DOC. Ultimately, the record reveals that despite numerous opportunities to reform his behavior, Mudica has been unsuccessful.

[15] We acknowledge Mudica's concerns about the COVID-19 pandemic. But the evidence does not support his claims of serious medical issues and it is likely that most, if not all, prisoners are concerned about contracting the virus. In February 2019, Mudica reported that he was in "fair" health, stating he is deaf in his left ear, has poor hearing in his right ear, and has had tumors removed from his colon, leg, and mouth. Appellant's App., Vol. 3 at 151. And the DOC evaluation shows he is in good health – "[f]ree of illness or injury[.]" *Id.*, Vol. 2 at 157. This information was available to the trial court when it rendered its decision. And although we certainly commend Mudica on all he has accomplished while recently incarcerated and encourage him to continue on this path, the issue before us is not whether we would have rendered the same

decision as the trial court. The question is whether the trial court abused its discretion in denying Mudica's motion in light of the record before it. Even if it was a close call given Mudica's recent improvement, based on his extensive criminal history, substance abuse, opportunities for reformation, and failed placement at SJCCC, we cannot conclude the trial court abused its discretion when it denied Mudica's motion to modify his sentence.

Conclusion

[16] Based on the record before us, we cannot conclude the trial court abused its discretion by denying Mudica's motion to modify his sentence. Accordingly, we affirm.

[17] Affirmed.

Bailey, J., and Tavitas, J., concur.