

## 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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### ATTORNEY FOR APPELLANT

Stacy R. Uliana  
Bargersville, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
J.T. Whitehead  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Brandon Lawrence Johnson,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

September 21, 2022

Court of Appeals Case No.  
22A-CR-596

Appeal from the Orange Circuit  
Court

The Honorable Steven Owen,  
Judge

Trial Court Cause No.  
59C01-1602-F4-160

**Pyle, Judge.**

## **Statement of the Case**

- [1] Brandon Johnson (“Johnson”) 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 Johnson’s petition, we affirm the trial court’s judgment.
- [2] We affirm.

## **Issue**

Whether the trial court abused its discretion when it denied Johnson’s petition to modify his sentence.

## **Facts**

- [3] In February 2016, the State charged Johnson, in Cause Number 59C01-1602-F4-160 (“Cause 160”), with Level 4 felony dealing in methamphetamine, Level 5 felony possession of methamphetamine, and Class B misdemeanor false informing. The State also alleged that Johnson was an habitual offender. Johnson was on probation for a prior conviction at the time the State filed the charges in Cause 160.
- [4] In October 2016, while Johnson was out on bond in Cause 160, the State charged him with Level 6 felony possession of methamphetamine, Level 6 felony unlawful possession of a syringe, Class B misdemeanor possession of marijuana, and Class B misdemeanor visiting a common nuisance in Cause

Number 59C01-1610-F6-1117 (“Cause 1117”). The charges were based on crimes that Johnson had allegedly committed while out on bond in Cause 160.

[5] Two weeks later, while Johnson was still out on bond in Cause 160, the State charged him with Level 6 felony possession of methamphetamine, Level 6 felony unlawful possession of a syringe, Level 6 felony maintaining a common nuisance, Level 6 felony possession of a legend drug, and Class A misdemeanor possession of a controlled substance in Cause Number 59C01-1610-F6-1188 (“Cause 1188”). These charges were also based on crimes that Johnson had allegedly committed while out on bond in Cause 160.

[6] In April 2017, pursuant to a plea agreement, Johnson pleaded guilty to Level 4 felony dealing methamphetamine in Cause 160. In exchange for Johnson’s guilty plea, the State dismissed the additional felony and misdemeanor charges and habitual offender allegation in Cause 160, the two felony and two misdemeanor charges in Cause 1117, and the one misdemeanor and four felony charges in Cause 1188. The plea agreement left sentencing for the Level 4 felony to the trial court’s discretion. Following a May 2017 sentencing hearing, the trial court sentenced Johnson to twelve (12) years in the Department of Correction (“the DOC”).

[7] In 2018, Johnson filed a motion to file a belated appeal, which the trial court granted. In his appeal, Johnson argued that his twelve-year sentence was inappropriate based on the nature of the offense and his character. *Johnson v. State*, 59C01-1602-F4-160 at \*4 (Ind. Ct. App. Dec. 29, 2020), *trans. denied*.

Regarding the nature of the offense, we noted that for an unspecified time period, Johnson had driven to Louisville every day to purchase at least one-half ounce of methamphetamine. *Id.* at \*6. Further, two days before he had been arrested in this case, Johnson had driven to Indianapolis and had purchased eight grams of methamphetamine. *Id.* Johnson had also sold one gram of methamphetamine shortly before the traffic stop that had led to his arrest in this case. *Id.* In addition, although Johnson had been convicted of only one count of dealing methamphetamine, Johnson had admitted that before his arrest, he had been engaged in activities related to dealing for several days and had sold a significant amount of methamphetamine. *Id.*

- [8] Regarding Johnson’s character, we noted that Johnson had a criminal history that dated back fifteen years and included drug-related charges such as possession of illegal substances and paraphernalia and dealing in methamphetamine. *Id.* His probation had been revoked in several causes, and he had been on probation when he had committed the dealing offense in this case. *Id.* at \*7. We also noted that Johnson had received a “significant benefit” from pleading guilty in this case because the State had dismissed multiple charges in three different cause numbers, including an habitual offender allegation. *Id.* In addition, we noted that when Johnson had been on probation for a drug-related offense in 2015, the trial court had ordered Johnson to participate in a drug program. *Id.* Instead of taking advantage of that opportunity, Johnson had continued to use and sell methamphetamine. *Id.* at \*8. We also noted that even being out on bond for the charges in this case had

not deterred Johnson from continuing to possess illegal substances. *Id.* For all of these reasons, we concluded that Johnson’s twelve-year sentence for Level 4 felony dealing methamphetamine with a prior conviction for dealing methamphetamine was not inappropriate. *Id.*

[9] One year later, in January 2022, Johnson filed a petition to modify his twelve-year sentence. At the February 2022 hearing on his petition, Johnson testified that he had completed Recovery While Incarcerated, a ten-to-twelve-month addictions program. Johnson further testified that at the time of the hearing, he was participating in another addictions program. Johnson further testified that he had also completed programs in relapse and recovery, mindful meditation, cognitive behavioral therapy, and anger management. Johnson testified that he had also participated in grief counseling. According to Johnson, he performed facility maintenance at Branchville Correctional Facility and was allowed to work “outside the fence.” (Tr. Vol. 2 at 7). Johnson further testified that he had received his G.E.D. and was enrolled in an Oakland City University program. In addition, Johnson testified that he had completed a culinary arts vocational program. Johnson also testified that he planned to obtain employment upon his release from the DOC and would follow any conditions that the trial court imposed upon him. Johnson believed that he would respond favorably to probation or home monitoring.

[10] Also, during the hearing, the State pointed out that Johnson “ha[d] benefitted already from his work at [the] DOC and he’[d] gotten almost two years of time cuts.” (Tr. Vol. 2 at 19). The State further pointed out that Johnson had

received a benefit from the April 2017 plea agreement because the State had dismissed multiple felony charges and agreed not to pursue the habitual offender allegation. After taking the matter under advisement, the trial court denied Johnson’s petition to modify his sentence.

[11] Johnson now appeals.

## Decision

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

[13] As a general rule, a trial court has no authority over a criminal defendant after sentencing. *Newman v. State*, 177 N.E.3d 888, 890 (Ind. Ct. App. 2021), *trans. denied*. An exception to this general rule is set forth in INDIANA CODE § 35-38-1-17(e), which provides that after a defendant has begun serving his sentence and the trial court has obtained a DOC progress report, 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. *Id.* at 890-91 (citing I.C. § 35-38-1-17(e)). 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. *Id.* 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.*

[14] Here, Johnson specifically argues that the trial court’s denial of his petition is “unreasonable and clearly against the logic and effect of the facts and

circumstances[] [because] Johnson is a nonviolent offender with a severe drug addiction who has been nothing short of a rehabilitative success in prison.” (Johnson’s Br. 13). We addressed this same argument in *Newman*, where Newman argued that his status as a non-violent offender and his progress in rehabilitation at the DOC merited a sentencing modification. However, we pointed out 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.” *Id.* (citation and quotation marks omitted). We further noted 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.” *Id.* (citation and quotation marks omitted). Given Newman’s culpability and criminal record, we concluded that the trial court had not abused its discretion when it denied his petition to modify his sentence. *Id.* See also *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 reduce Marshall’s sentences), *trans. denied*.

[15] Here, our review of the evidence reveals that Johnson has an extensive criminal history that includes multiple drug-related misdemeanors and felonies. Johnson also has a history of probation revocations and was on probation when he committed the offenses in Cause 160. Furthermore, Johnson committed

additional drug-related offenses while out on bond in Cause 160. We also note that Johnson received a significant benefit from his plea agreement.

Specifically, the State dismissed multiple misdemeanors and felonies in three separate causes. The State also dismissed an habitual offender allegation.

Lastly, we note that Johnson's rehabilitative efforts while incarcerated have already reduced his sentence by nearly two years. Based on these facts and circumstances, the trial court did not abuse its discretion when it denied Johnson's petition to modify his sentence.

[16] Affirmed.

Bradford, C.J., and Crone, J., concur.