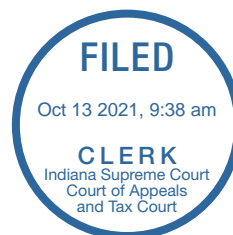


MEMORANDUM DECISION

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

Douglas Reaves,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

October 13, 2021

Court of Appeals Case No.
21A-CR-710

Appeal from the Dearborn County
Circuit Court

The Honorable Gregory W. Coy,
Judge

Trial Court Cause No.
9758

Robb, Judge.

Case Summary and Issue

- [1] In 1987, Douglas Reaves was convicted of felony murder and Class A felony robbery resulting in serious bodily injury. He was sentenced in 1988 to sixty years for felony murder and forty years for robbery with the sentences ordered to be served consecutively. Reaves appealed, and our supreme court affirmed his convictions and sentence. *Reaves v. State*, 586 N.E.2d 847, 860 (Ind. 1992).
- [2] In 2021, Reaves filed a petition seeking modification of his sentence. The State objected, and the trial court denied the petition. Reaves, pro se, now appeals, raising several issues which we consolidate and restate as one: whether the trial court abused its discretion in denying his petition for sentence modification.¹ Concluding it did not, we affirm.

Facts and Procedural History

- [3] After Reaves' direct appeal was decided in 1992, he sought several different forms of relief through post-conviction proceedings, a motion to correct erroneous sentence, and appeals. He was unsuccessful in those attempts to obtain relief. In 2021, Reaves filed a petition seeking modification of his

¹ Many of the issues Reaves raises in his Appellant's Brief are unrelated to the trial court's order denying his petition to modify his sentence, essentially seeking post-conviction relief from trial issues. *See* Appellant's Brief at 4-5 (for instance, alleging he was incompetent to stand trial and that he was denied the effective assistance of trial counsel). We decline to address those issues not related to his petition for modification.

sentence.² The State objected to modification. The trial court denied Reaves' petition without a hearing. Reaves now appeals.

Discussion and Decision

I. Standard of Review

[4] We review a trial court's decision as to a petition to modify a sentence only for an abuse of discretion. *Schmitt v. State*, 108 N.E.3d 423, 425 (Ind. Ct. App. 2018). 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. *Carr v. State*, 33 N.E.3d 358, 359 (Ind. Ct. App. 2015), *trans. denied*.

II. Sentence Modification

[5] In general, trial courts have no authority over a defendant after sentencing. *Sargent v. State*, 158 N.E.3d 783, 785 (Ind. Ct. App. 2020). Indiana Code section 35-38-1-17 is an exception to that general rule, giving trial courts authority under certain circumstances to reduce or suspend a sentence after a

² Reaves actually filed three petitions on the same day. One, titled "Petition for sentence reduction or suspension," sought relief pursuant to Indiana Code section 35-38-1-17 to have his sentence modified to the presumptive sentence after consideration of new evidence. Appellant's Appendix, Volume 2 at 22-40. Another, titled "Petitioner's Motion Seeking Permission to File Sentence Reduction or Suspension," was directed to the State and asked for its consent to file a petition for sentence modification. *See id.* at 13. The last, titled "Petition to Have Sentence Reduced or Suspension [sic]," asked the trial court to reduce his sentence without the State's consent under the version of Indiana Code section 35-38-1-17 in effect at the time of his sentencing and also sought permission to enter evidence outside the record. *Id.* at 19-21.

defendant begins serving the sentence. *Barber v. State*, 122 N.E.3d 809, 810 (Ind. 2019).

[6] Because Reaves was convicted of felony murder and Class A felony robbery, the question of modification in his case is governed by the subsections of Indiana Code section 35-38-1-17 that apply to a violent criminal. Ind. Code § 35-38-1-17(d)(1), (12) (defining a “violent criminal” as a person convicted of, among other offenses, murder or robbery as a Class A felony); § 35-38-1-17(c) (stating only sections (k) and (m) of the statute apply to a violent criminal).

Reaves’ petition is therefore subject to the following:

This subsection applies to a convicted person who is a violent criminal. A convicted person who is a violent criminal may, not later than three hundred sixty-five (365) days from the date of sentencing, file one (1) petition for sentence modification under this section without the consent of the prosecuting attorney. After the elapse of the three hundred sixty-five (365) day period, a violent criminal may not file a petition for sentence modification without the consent of the prosecuting attorney.

Ind. Code § 35-38-1-17(k).³ Our appellate courts have consistently held that once the limited amount of time granted by section 35-38-1-17 has passed, a trial court is without authority to reduce or suspend a sentence without the

³ Subsection (m) states that “[n]otwithstanding subsection (k), a person who commits an offense after June 30, 2014, and before May 15, 2015, may file one (1) petition for sentence modification without the consent of the prosecuting attorney[.]” As Reaves did not commit his offenses within that timeframe, subsection (m) is not applicable to him.

prosecutor's consent. *Johnson v. State*, 36 N.E.3d 1130, 1134-35 (Ind. Ct. App. 2015), *trans. denied*.

- [7] Reaves was sentenced in 1988. Because he filed his petition more than 365 days after he was sentenced, he needed the prosecutor's consent to modification. The prosecutor did not consent, and therefore, the trial court lacked the authority to modify Reaves' sentence.
- [8] To the extent Reaves' pleadings requested that the version of Indiana Code section 35-38-1-17 in effect at the time of his sentencing be applied to his petition, we note two things. First, the current version of the statute states that it applies to a person who commits an offense or is sentenced prior to July 1, 2014, and it therefore applies to Reaves. Ind. Code § 35-38-1-17(a). Second, the version of the statute in effect at the time of Reaves' sentencing required prosecutorial consent after 180 days had elapsed since the defendant began serving his sentence. Ind. Code § 35-38-1-17(b) (1986). Therefore, even if the earlier version of the statute was applicable here, the result would be the same.
- [9] Finally, Reaves asserts that this court has the authority under Indiana Appellate Rule 7(B) to revise his sentence upon appeal from the denial of his petition for modification. *See* Reply Brief of Appellant at 5. However, as the State points out, the *substance* of Reaves' petition for modification is not before us, as the trial court did not deny a modification on the merits but on the fact that it had no authority to entertain the petition in the absence of the State's consent. *See* Brief of Appellee at 4 n.1. The only issue properly before this court is whether

the trial court abused its discretion in denying the petition on that basis. We therefore will not engage in a Rule 7(B) analysis of Reaves' sentence.⁴

Conclusion

[10] The trial court did not abuse its discretion in denying Reaves' petition for modification of his sentence because he filed the petition more than 365 days after he was sentenced, and the State did not consent to modification. The judgment of the trial court is affirmed.

[11] Affirmed.

Bradford, C.J., and Altice, J., concur.

⁴ Reaves has requested that he be allowed to add several "exhibits" to the record regarding his education and work history so this court can "review [his] incarceration history." Defendant's Motion to Add Documents outside of Record at 2. Because we may not review his sentence at this juncture, we do not need to review these documents, and his motion is denied by a separate order issued this date.