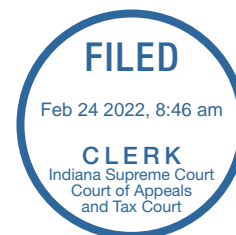


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Glen E. Koch II
Boren, Oliver & Coffey, LLP
Martinsville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Myriam Serrano
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Kente Lamonte Barker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 24, 2022

Court of Appeals Case No.
21A-CR-1733

Appeal from the Marion Superior
Court

The Honorable Jose D. Salinas,
Judge

Trial Court Cause No.
49G14-0102-FA-38031

Mathias, Judge.

- [1] Kente Lamonte Barker appeals the Marion County Re-Entry court’s (“REC”) order denying his petition for modification of his sentence. Barker presents a

single issue for our review, namely, whether the REC erred when it found that it did not have the authority to grant Barker’s petition. We affirm.

Facts and Procedural History

[2] In February 2001, the State charged Barker with dealing in a narcotic drug, as a Class A felony. In 2006, Barker pleaded guilty as charged, and the trial court sentenced him to thirty-eight years in the Department of Correction. On September 30, 2019, while Barker was on parole, the Parole Board “ordered [Barker] to participate in REC as a stipulation to [Barker]’s parole conditions[.]” Appellant’s App. Vol. II p. 30. Accordingly, the REC moved the trial court to transfer Barker’s case to the REC “for purposes of monitoring [Barker] while he participates” in the REC. *Id.* The REC also stated in its motion that “the sole purpose of the file transfer is to allow the REC to include in the sentencing file all documentation related to [Barker]’s progress in the REC” and “[t]hat the REC will not assume any jurisdiction over [Barker]’s case with respect to Petitions for Post-Conviction Relief, appeals[,] or any challenges to aspects dealing with the [Barker]’s original sentence.” *Id.*

[3] On October 1, the trial court granted the REC’s motion, and Barker entered the re-entry program. However, within two weeks, Barker was arrested and incarcerated.¹ Accordingly, on January 10, 2020, without a hearing, the REC terminated Barker’s participation in the re-entry program. And on February 6,

¹ The record suggests that, ultimately, no new criminal charges were filed.

the Parole Board revoked Barker's parole. On February 27, Barker asked the REC to schedule a hearing on his termination from the re-entry program. The REC ordered that a hearing be scheduled.

[4] While a hearing on the February 27 motion was pending, on May 22, Barker, pro se, filed with the REC a Motion for Relief from Judgment or Order pursuant to Trial Rule 60(B). In that motion, Barker asked the REC "to order the dismissal of the Parole Revocation Judgment or Order against [him] with prejudice and return him back to the Marion County Jail to resume his Evidentiary Hearing in the Criminal Court 14 Re[-]Entry Drug Court." *Id.* at 45. Barker alleged in relevant part that the Parole Board "did not have Subject Matter or Personal Matter Jurisdiction over [him] when it ordered the retaking of [him] and entered Judgment against [him] to revoke his parole." *Id.* at 45–46.

[5] On June 30, the REC held a hearing on Barker's 60(B) motion and concluded that it

would take him back in Re-entry Court and start over again. Start fresh. He's been incarcerated now for quite some time, and I think re-entry would be appropriate for him. [W]e could . . . I can lift our hold here so he could be taken back to the parole board and we can convey this information to parole, that Re-entry Court will accept him back.

Tr. Vol. II p. 45. The REC clarified that its agreement to accept him back in the re-entry program was "subject to" the Parole Board's determination whether Barker would be placed "back on parole." *Id.* at 48–49.

- [6] Pending the Parole Board’s determination, on November 30, Barker filed a petition for modification of his sentence. However, during a December 11 evidentiary hearing regarding Barker’s previous termination from the re-entry program, the REC stated that it did not “have jurisdiction for the modification.” *Id.* at 61. At the conclusion of that hearing, the REC reversed its termination of Barker from participating in the re-entry program but reiterated that it was up to the Parole Board “whether to send him back to us.” *Id.* at 77.
- [7] On June 22, 2021, Barker wrote a letter to the REC asking that it “order D.O.C. to place [him] back into [the re-entry] program.” Appellant’s App. Vol. II p. 63. The same day, the REC denied Barker’s request, stating that it would “not order the DOC to put [Barker] back in our program” but that, “as previously stated[, if] the parole board believes that our REC is appropriate for [Barker,] then we will accept him back.” *Id.* Barker filed a motion to correct error, which the REC denied. This appeal ensued.

Discussion and Decision

- [8] Barker contends that the REC erred when it denied his June 22, 2021, request to be reinstated to the re-entry program. On appeal, the parties treat Barker’s pro se letter as a petition for modification of his sentence. A trial court’s decision regarding a petition for a modification of a sentence is reviewed for an abuse of discretion. [*Merkel v. State*, 160 N.E.3d 1139, 1141 \(Ind. Ct. App. 2020\)](#). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[9] Barker maintains that, despite the REC’s assertion to the contrary, the REC has the authority to reinstate him into the re-entry program without the Parole Board’s determination. In particular, Barker alleges that [Indiana Code Section 35-38-1-17](#) grants the REC the authority to modify his sentence in this regard. However, in support of his contention, Barker cites subsection (e) of the statute, which states, generally, 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.” But Barker ignores subsection (j) of the statute, which provides in relevant part that “[a] convicted person who is not a violent criminal may file a petition for sentence modification under this section . . . not more than one (1) time in any three hundred sixty-five (365) day period . . . without the consent of the prosecuting attorney.”

[10] Barker’s June 22, 2021, petition for sentence modification was his second such petition within one year, the first having been filed on November 30, 2020. Thus, because Barker did not get the consent of the prosecuting attorney to file the June 22, 2021, petition, the REC did not have statutory authority to even consider it. *See Vazquez v. State*, 37 N.E.3d 962, 964 (Ind. Ct. App. 2015) (holding [Indiana Code section 35-38-1-17\(j\)](#) “mandate[d]” dismissal of defendant’s second petition for sentence modification within three months); *see also, e.g., Merkel*, 160 N.E.3d at 1141 (holding trial court had no statutory authority to consider petition for sentence modification under [Indiana Code section 35-38-1-17\(k\)](#) where violent criminal filed petition without prosecuting attorney’s consent).

[11] Moreover, the REC is a “problem solving court” and, as expressly acknowledged in its 2019 motion to the trial court, the REC’s jurisdiction is limited. *See I.C. §§ 33-23-16-8, -12*. Again, the REC stated in its motion to the trial court that the REC would “not assume any jurisdiction over [Barker]’s case with respect to Petitions for Post-Conviction Relief, appeals[,] or *any challenges to aspects dealing with [Barker]’s original sentence.*” Appellant’s App. Vol. II p. 30 (emphasis added). Thus, we agree with the State that only the sentencing court, not the REC, may consider Barker’s petition for modification of his sentence.

[12] Finally, Barker acknowledges that “he was originally placed in the re[-]entry program as a condition of parole.” Appellant’s Br. p. 12. After the Parole Board revoked his parole in February 2020, *Indiana Code Section 35-50-6-1(c)* required that Barker be “imprisoned for all or part of the remainder of [his] fixed term.” And the Parole Board had the sole authority to reinstate Barker on parole “at any time after the revocation.” *Id.* Thus, the REC correctly found that Barker’s reinstatement to the re-entry program was subject to the Parole Board’s determination. For these reasons, the REC did not abuse its discretion when it denied Barker’s petition for modification of his sentence.

[13] Affirmed.

Bailey, J., and Altice, J., concur.