

STATEMENT OF THE CASE

Ahmad Foster appeals the trial court's denial of his motion to modify sentence. Foster raises six issues for our review, which we consolidate and restate as the following single issue: whether the trial court erred when it denied his motion to modify his sentence. We affirm.

FACTS AND PROCEDURAL HISTORY

On April 9, 1992, a jury found Foster guilty of felony murder, auto theft, criminal recklessness, and carrying a handgun without a license. The trial court entered judgments of conviction against Foster and ordered him to serve an aggregate term of fifty-three years. This court affirmed his convictions on direct appeal. See Foster v. State, 633 N.E.2d 337 (Ind. Ct. App. 1994), trans. denied.

On September 9, 2005, Foster filed an amended petition for post-conviction relief. After a timely response by the State and a hearing before the post-conviction court, the court denied Foster's petition. We affirmed. Foster v. State, No. 49A05-0607-PC-357 (Ind. Ct. App. May 10, 2007), trans. denied.

On January 20, 2010, Foster filed with the trial court a motion for sentence modification, pursuant to Indiana Code Section 35-38-1-17(b). In particular, Foster argued that his youth at the time of his crimes, his post-incarceration accomplishments, such as obtaining his G.E.D., and other post-incarceration factors mitigated against his completion of the originally entered fifty-three-year sentence. On January 26, the trial court took the motion under advisement and ordered the State to respond within twenty days. On April 7, well past the original twenty-day requirement, the State filed its

response, objecting to Foster's proposed modification. The next day, the trial court accepted the State's response and denied Foster's motion. This appeal ensued.

DISCUSSION AND DECISION

Foster appeals the trial court's denial of his motion to modify sentence. Foster filed his motion to modify pursuant to Indiana Code Section 35-38-1-17(b), which states, in relevant part, as follows: "If more than three hundred sixty-five (365) days have elapsed since the convicted person began serving the sentence and after a hearing at which the convicted person is present, the court may reduce or suspend the sentence, subject to the approval of the prosecuting attorney. . . ." Here, the prosecuting attorney not only did not approve, she expressly objected to the proposed modification. See Appellant's App. at 49. Our Supreme Court has held that "[a] sentencing judge cannot circumvent the plain provisions in the sentence modification statute" State v. Fulkrod, 753 N.E.2d 630, 633 (Ind. 2001). As such, the trial court lacked statutory authority to modify Foster's sentence, and we cannot say that the court erred in denying his motion.

Nonetheless, Foster raises six arguments on appeal in an attempt to compel the trial court to act in a manner contrary to the sentencing statute. In particular, Foster asserts as follows: (1) the State "forfeited its right to oppose" his request when it missed the trial court's twenty-day deadline to respond, Appellant's Br. at 6 (capitalization removed); (2) the State's response was untimely and, therefore, the trial court erred in considering it; (3) the "trial court entered into an implied preliminary agreement to suspend or modify [Foster's] sentence" when it set his motion for a hearing, id. at 12

(capitalization removed); (4) the State’s lack of timeliness prejudiced Foster; (5) the legislative intent behind Indiana Code Section 35-38-1-17(b) was to “give more discretion to trial judges,” *id.* at 15 (capitalization removed); and (6) Indiana Code Section 35-38-1-17 “has been subjected to prosecutorial abuse,” which, Foster maintains, makes the law a nullity, *id.* at 17. However, none of Foster’s arguments on appeal are well taken.

As for Foster’s first, second, and fourth arguments, it was plainly within the trial court’s discretion to accept the State’s April 7 objection, even if that objection was filed after the trial court’s original request for a response within twenty days. Foster’s third, fifth, and sixth arguments lack cogent reasoning, and we will not consider them. See Ind. Appellate Rule 46(A)(8)(a). The trial court’s decision to deny Foster’s petition for modification of sentence is supported by the plain language of Indiana Code Section 35-38-1-17(b), and, therefore, we affirm that decision.

Affirmed.

DARDEN, J., and BAILEY, J., concur.