



Pursuant to a plea agreement, Kirby D. Oliver pled guilty to murder and appeals the denial of his motion requesting placement in a community corrections program (“Placement Motion”). He raises several issues, of which we find the following dispositive: Whether the trial court had the authority to consider placing Oliver in a community corrections program.<sup>1</sup>

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Oliver was charged in 2005 with three counts of murder<sup>2</sup> and various other related offenses. In exchange for dismissal of the other charges and the imposition of concurrent sentences, Oliver pled guilty to three counts of murder. In 2009, Oliver filed a motion with the trial court requesting placement in community corrections. The trial court summarily denied the motion, and Oliver now appeals.

### **DISCUSSION AND DECISION**

Oliver asserts that the trial court erred in denying his Placement Motion. He contends that by enacting Indiana Code chapter 35-38-2.6, a chapter pertaining to the direct placement of offenders in community corrections programs, the Indiana legislature specifically meant to provide the program as an alternative for those offenders whose sentences cannot be suspended.

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<sup>1</sup> Oliver’s other argument regarding executed time is only applicable to a decision regarding whether or not he should be placed in a community corrections program. Because we hold that the court lacked the authority to grant the relief Oliver sought, we need not reach the merits of his additional argument.

<sup>2</sup> See Ind. Code § 35-42-1-1.

Subsection (b) of Ind. Code § 35-38-2.6-1, however, specifically states that the chapter does not apply to persons convicted of felonies listed in Indiana Code section 35-50-2-2(b)(4). Murder is the first felony listed in this code section. The trial court did not err in summarily denying Oliver's motion.<sup>3</sup>

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.

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<sup>3</sup> Oliver also contends that he had a right to a hearing on his motion under Indiana Code section 35-38-1-17(b). We need not reach this issue due to our holding that the trial court was barred by statute from granting the relief sought.