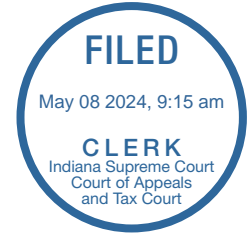


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE  
**Court of Appeals of Indiana**

Ty Evans,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

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May 8, 2024

Court of Appeals Case No.  
23A-CR-2403

Appeal from the  
Marion Superior Court

The Honorable  
Shatrese M. Flowers, Judge

The Honorable  
James K. Snyder, Magistrate

**Memorandum Decision by Senior Judge Robb**  
Judges Tavitas and Foley concur.

**Robb, Senior Judge.**

## Statement of the Case

- [1] Ty Evans appeals from the trial court’s denial of his verified petition for writ of habeas corpus. He argues the court should have ordered his release from incarceration because the State is barred from re-prosecuting his habitual offender sentencing enhancement. Finding no error, we affirm.

## Facts and Procedural History

- [2] In 2005, the State charged Evans with Class A felony attempted murder, Class B felony aggravated battery, Class B felony criminal confinement, and Class A misdemeanor resisting law enforcement. The State also filed an habitual offender sentencing enhancement. The jury determined Evans was guilty of the offenses, and Evans admitted he was an habitual offender. The trial court imposed a total sentence of seventy-one years, including a sentencing enhancement of thirty years. Evans appealed his convictions, but the Court affirmed. *Evans v. State*, 855 N.E.2d 378, 381 (Ind. Ct. App. 2006), *trans. denied*.
- [3] Evans petitioned for post-conviction relief, which the trial court denied. Evans appealed, but the Court issued a memorandum decision affirming the post-

conviction court's judgment. *Evans v. State*, No. 49A04-1112-PC-697, at \*8 (Ind. Ct. App. Aug. 8, 2012) (mem.), *trans. denied*.

[4] Next, Evans requested and received the Court's permission to file a successive petition for post-conviction relief. *Evans v. State*, No. 20A-SP-1719 (Ind. Ct. App. Sept. 25, 2020) (mem.). In subsequent litigation, Evans sought to withdraw his guilty plea to the habitual offender sentencing enhancement, claiming: (1) the State had failed to prove the predicate offenses occurred in the order set forth in the charging documents; and (2) he would not have entered a guilty plea if he had been aware of the error. The post-conviction court denied Evans' petition, and he appealed. The Court reversed and remanded "with instructions to issue an amended abstract of judgment consistent with this opinion." *Evans v. State*, 209 N.E.3d 472, 482 (Ind. Ct. App. 2023) ("*Evans IV*").

[5] On remand, the trial court scheduled a hearing. Evans filed an emergency motion asking the court to vacate the hearing and issue an amended abstract of judgment. He argued: (1) the court lacked jurisdiction to take any action other than amending the abstract; and (2) he had fully served his sentence. In response, the State claimed it could retry Evans on the habitual offender sentencing enhancement because he had other predicate felony convictions. Later, the State filed an amended charging information for the sentencing enhancement.

- [6] After a hearing, the trial court issued an order amending the abstract of judgment to remove the habitual offender sentencing enhancement. The court also noted the State intended to retry Evans on the enhancement.
- [7] Evans moved for immediate release from custody, which the trial court denied. He then returned to the *Evans IV* Court and filed a Corrected Verified Petition for Writ in Aid of Appellate Jurisdiction, asking the Court to order his immediate release from incarceration. On October 23, 2023, the *Evans IV* Court denied his Verified Petition, determining that the State was not barred from re-prosecuting Evans on the sentencing enhancement.
- [8] Meanwhile, Evans had filed with the trial court a motion to dismiss. The court denied the motion after a hearing. Evans asked the court to certify its ruling for discretionary interlocutory review, and the court granted his request. Next, Evans asked the Court to accept jurisdiction over this appeal. The Court denied Evans' motion in an order. *Evans v. State*, No. 23A-CR-2557 (Ind. Ct. App. Dec. 14, 2023) (mem.).
- [9] Evans then filed with the trial court a verified petition for writ of habeas corpus, arguing he was entitled to immediate release. The court denied Evans' verified petition, and this appeal followed.

## Discussion and Decision

- [10] Evans asks the Court to direct the trial court to release him from incarceration. The General Assembly has provided: "Every person whose liberty is restrained, under any pretense whatever, may prosecute a writ of habeas corpus to inquire

into the cause of the restraint, and shall be delivered from the restraint if the restraint is illegal.” Ind. Code § 34-25.5-1-1 (1998). “The purpose of a writ of habeas corpus is to determine the lawfulness of the defendant’s detention; it cannot be used to attack a conviction or sentence.” *Willet v. State*, 151 N.E.3d 1274, 1278 (Ind. Ct. App. 2020).

[11] In general, we review a decision on habeas corpus relief for an abuse of discretion. *Benford v. Marvel*, 842 N.E.2d 826, 828 (Ind. Ct. App. 2006). But there are no evidentiary disputes in the current case, only questions of law. Our standard of review is de novo when “the issues on appeal are pure questions of law that do not require reference to extrinsic evidence, inferences drawn from that evidence, or consideration of credibility issues[.]” *Hale v. Butts*, 88 N.E.3d 211, 214 (Ind. Ct. App. 2017).

[12] Evans argues that the State lacks the authority to re-prosecute him on the sentencing enhancement because he is entitled to immediate release, having completed his sentence for attempted murder. He cites *Wampler v. State*, 168 N.E.3d 1026 (Ind. Ct. App. 2021) in support of his claim, but that case is distinguishable. Wampler was determined to be guilty of two counts of burglary and to be an habitual offender. One of the predicate felonies for the sentencing enhancement was later vacated. Accordingly, the post-conviction court vacated the sentencing enhancement.

[13] Next, the State moved to resentence Wampler on one of the burglary convictions, even though he had finished serving his sentences for those

convictions and had been released from the Indiana Department of Correction. The trial court granted the State’s motion, but the Court reversed. The Court determined “it would be manifestly unfair” to resentence Wampler to additional time for the burglary conviction when he had served his sentence and been released. *Id.* at 1029.

[14] *Wampler* is dissimilar to Evans’ case. To be sure, the State does not dispute that Evans has completed his sentence for attempted murder and the other convictions. But the State is not seeking to resentence Evans on his convictions. Instead, it seeks to retry him on the sentencing enhancement, alleging that Evans has other predicate felonies. Thus, the State is not attempting to sentence Evans to “additional time” for a conviction, as was the case in *Wampler*. *Id.*

[15] The *Evans IV* Court determined that retrial of Evans is permitted under the Indiana Supreme Court’s decision in *Jaramillo v. State*, 823 N.E.2d 1187 (Ind. 2005).<sup>1</sup> In *Jaramillo*, the defendant was convicted of operating while intoxicated

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<sup>1</sup> Evans asks the Court to strike the portion of the *Evans IV* Court’s October 23, 2023, order determining that the State may retry him. Evans argues the order was “erroneous, entered without the benefit of full briefing of the issue addressed, and not dispositive of any other pending matters.” Appellant’s Br. p. 23. We are not authorized to alter the language of another panel’s decisions. In any event, the State does not argue the *Evans IV* Court’s order has preclusive effect here, so we consider it for persuasive value.

Evans further argues the State is barred from claiming it may retry Evans because the State did not petition the Indiana Supreme Court to accept transfer over the *Evans IV* Court’s original decision. Evans’ cited authorities do not address whether failing to petition for transfer amounts to waiver of alleged error. Further, the *Evans IV* Court’s decision did not specifically bar retrial, so there was nothing unfavorable to the State that might have caused the State to request transfer.

causing death with a prior conviction, a Class B felony. The jury further determined Jaramillo was an habitual substance offender.

[16] On appeal, the Court determined the State had failed to prove a conviction was entered in Jaramillo's prior case of operating while intoxicated. As a result, the Court vacated both the Class B felony enhancement and the habitual substance offender sentencing enhancement. The State sought to retry Jaramillo on both enhancements, but Jaramillo requested transfer, arguing retrial was barred by the Double Jeopardy Clause. Our Supreme Court, citing *Monge v. California*, 574 U.S. 721 (1998), determined "the Double Jeopardy Clause does not prevent the State from re-prosecuting a habitual offender enhancement after conviction therefore has been reversed on appeal for insufficient evidence." 823 N.E.2d at 1191. The Indiana Supreme Court remanded the case to the trial court for further proceedings on the enhancement. *See also Dexter v. State*, 959 N.E.2d 235, 240 (Ind. 2012) (following *Jaramillo* and determining retrial of an habitual offender enhancement was permissible where the State failed to adequately prove the existence of a predicate judgment of conviction).

[17] In the current case, as in *Jaramillo*, the State seeks to retry Evans on a sentencing enhancement. And the *Evans IV* Court vacated the sentencing enhancement due to the State failing to prove the proper chronological order of the predicate felonies, which is similar to the State's failure in *Jaramillo* to prove a judgment of conviction existed for the predicate felony. Following our Supreme Court's precedent, we conclude the State may retry Evans on the habitual offender sentencing enhancement. Evans is not entitled to immediate

release, and the trial court did not err in denying his petition for writ of habeas corpus.

## Conclusion

[18] For the reasons stated above, we affirm the judgment of the trial court.

[19] Affirmed.

Tavitas, J., and Foley, J., concur.

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