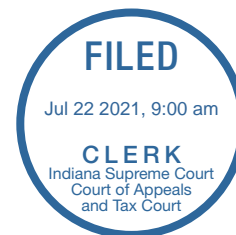


## MEMORANDUM DECISION

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

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Michael L. Jarvis,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

July 22, 2021

Court of Appeals Case No.  
21A-CR-188

Appeal from the Lawrence  
Superior Court

The Honorable John M. Plummer,  
III, Judge

Trial Court Cause No.  
47D01-1904-F5-659

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellant-Defendant, Michael Jarvis (Jarvis), appeals the trial court's denial of his motion to modify the sentence imposed by the trial court following his guilty plea to attempted burglary, a Level 5 felony, Ind. Code §§ 35-43-2-1 and 35-41-5-1.
- [2] We affirm.

## ISSUE

- [3] Jarvis presents this court with one issue on appeal: Whether the trial court abused its discretion when it summarily denied his motion to modify his sentence.

## FACTS AND PROCEDURAL HISTORY

- [4] On April 12, 2019, the State filed an Information, charging Jarvis with Level 5 felony attempted burglary and Level 5 felony conspiracy to commit burglary. On November 12, 2019, Jarvis pleaded guilty pursuant to an agreement with the State that he would serve a fixed three-and-one-half-year sentence with the Indiana Department of Correction (IDOC) and the State would dismiss the conspiracy charge. The plea agreement also provided that the trial court "shall recommend RWI in IDOC." (Appellant's App. Vol. II, p. 25). The parties agree that RWI is an acronym for Recovery While Incarcerated, a substance abuse treatment program. The written plea agreement did not contain any terms pertaining to whether Jarvis could petition to modify his sentence. The trial court took Jarvis' plea under advisement.

[5] On December 9, 2019, the trial court held Jarvis' sentencing hearing. After formally accepting Jarvis' guilty plea and entering judgment of conviction for Level 5 felony attempted burglary, the trial court sentenced Jarvis to three and one-half years in the IDOC. In its oral sentencing statement, the trial court did not mention that it would consider modifying Jarvis' sentence upon the successful completion of substance abuse treatment at the IDOC. However, on December 9, 2019, the trial court also issued its written sentencing order, which, in addition to sentencing Jarvis to the IDOC for three and one-half years, provided that

[u]pon successful completion of the clinically appropriate substance abuse treatment program as determined by IDOC, the court will consider a modification to this sentence. The [c]ourt will consider such modification upon receipt of [Jarvis'] petition and review of the progress report.

(Appellant's App. Vol. II, p. 47). The abstract of judgment issued in conjunction with Jarvis' sentence repeated the foregoing provision regarding Jarvis' right to petition for modification upon successful completion of a substance abuse treatment program. The abstract also indicated that Jarvis was not to be placed in Purposeful Incarceration.

[6] On September 25, 2020, Jarvis filed an unverified *pro se* motion for modification of sentence in which he averred, among other things, that "the prosecuting attorney has consented to a modification" and requested that the trial court order a report regarding his conduct while incarcerated. (Appellant's App. Vol. II, p. 50). A report from the IDOC generated on October 22, 2020, related that

Jarvis was then enrolled in RWI but did not indicate that he had completed RWI or any other substance abuse treatment. On November 2, 2020, the State filed its response to Jarvis' motion for modification in which it argued that the trial court was without authority to modify Jarvis' sentence because he had pleaded guilty pursuant to a fixed plea agreement which left no sentencing discretion to the trial court. The State also objected to Jarvis' averment in his motion that it had consented to a modification and stated that it did "not now consent to a modification." (Appellant's App. Vol. II, p. 57). On November 2, 2020, the trial court denied Jarvis' motion to modify his sentence without holding a hearing or entering findings of fact or conclusions thereon.

[7] Jarvis now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### I. *Standard of Review*

[8] Jarvis appeals after the trial court denied his motion to modify his sentence. We review a trial court's decision regarding a sentence modification for an abuse of discretion. *Gardiner v. State*, 928 N.E.2d 194, 196 (Ind. 2010). An abuse of a trial court's discretion occurs when its decision is clearly against the logic and effect of the facts and circumstances before it or when the trial court misinterprets the law. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013).

### II. *Analysis*

[9] Jarvis contends that the trial court abused its discretion when it denied his modification motion based on the trial court's crediting the State's objection

that it lacked authority under the terms of his plea agreement to modify his sentence. The State responds that, because Jarvis pleaded guilty pursuant to a fixed plea agreement, the trial court had no authority to modify Jarvis' sentence. Before addressing these arguments, we observe that there is a discrepancy between the trial court's oral and written sentencing orders, in that the trial court did not include the modification provision in its oral sentencing statement but did include it in its written sentencing order. When faced with such a discrepancy, we normally examine both the trial court's written and oral statements to assess the trial court's intent upon sentencing, and we have the option of crediting the statement which accurately pronounces sentence or remanding for resentencing. *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007). However, the State develops no real argument that the trial court did not intend to impose the modification provision at sentencing, and so we will base our analysis on the assumption that the trial court's written sentencing order accurately reflected its intent.

[10] We next address the State's argument that the trial court did not have authority under the terms of the plea agreement to modify Jarvis' sentence, and therefore, it lacked the authority to entertain his September 25, 2020, motion to modify his sentence. We agree with the State that, as a general rule, the trial court is bound by the terms of a plea agreement once it accepts that agreement. *See* I.C. § 35-35-3-3(e) ("If the court accepts the plea agreement, it shall be bound by its terms."). We also agree with the State that, as a general proposition, "[w]hen a court accepts a plea agreement that calls for a fixed sentence, it has no

discretion to impose anything other than the precise sentence upon which the parties agreed.” *Rodriguez v. State*, 129 N.E.3d 789, 794 (Ind. 2019) (cleaned up). Here, the trial court included a modification provision that was not authorized by the plea agreement. However, the State had thirty days after the entry of the trial court’s written order to file a motion to correct error. *See* Ind. Trial Rule 59(C). It did not. In his plea agreement, Jarvis agreed to a fixed sentence and waived the right to appeal his sentence. One of the effects of these plea agreement provisions was that the State was prevented from cross-appealing the issue of the trial court sentencing Jarvis outside the bounds of his plea agreement. *See* Ind. Appellate Rule 7(A) (“The State may not initiate an appeal of a sentence, but may cross-appeal where provided by law.”). As a result, under the facts and circumstances of this case, the State is now foreclosed from challenging the trial court’s imposition of a term that was outside the parameters of Jarvis’ plea agreement.

[11] Be that as it may, we cannot conclude that the trial court abused its discretion when it denied Jarvis’ motion without a hearing. There is nothing in the modification statute that requires a trial court to hold a hearing before denying a modification petition. *See* I.C. § 35-38-1-17. In addition, the trial court’s written order provided that it would consider a modification “[u]pon successful completion of the clinically appropriate substance abuse treatment program[.]” (Appellant’s App. Vol. II, p. 47). Jarvis did not state in his unverified motion that he had completed RWI or any other substance abuse treatment, and the October 22, 2020, progress report filed by the IDOC did not reflect that Jarvis

had completed his substance abuse treatment. Because Jarvis had not completed the treatment, a condition precedent for his motion for modification, the trial court did not abuse its discretion in denying his motion.

## **CONCLUSION**

[12] Based on the foregoing, we conclude that the trial court did not abuse its discretion when it considered, but ultimately denied, Jarvis' motion to modify his sentence.

[13] Affirmed.

[14] Mathias, J. and Crone, J. concur