

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

Bryan S. Skillman
Terre Haute, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Tristan Grant Spencer,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 22, 2022

Court of Appeals Cause No.
22A-CR-340

Appeal from the Vigo
Superior Court

The Honorable Matthew
Sheehan, Judge

Trial Court Cause No.
84D05-1712-MR-3988

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Tristin Spencer (Spencer), appeals the trial court's Order vacating its *sua sponte* order modifying his sentence from home detention to work release.

[2] We affirm.

ISSUE

[3] Spencer presents a single issue on appeal, which we restate as: Whether the trial court abused its' discretion by vacating its *sua sponte* order which modified his sentence from home detention to work release.

FACTS AND PROCEDURAL HISTORY

[4] On June 21, 2018, pursuant to an open plea agreement, Spencer pled guilty to Level 2 felony voluntary manslaughter. On August 17, 2018, the trial court sentenced Spencer to ten years to be served on work release with the Vigo County Community Corrections (VCC). In March 2020, COVID-19 spread rapidly across the country. To curb the spread of the virus, many individuals who had been ordered to serve their sentences in the VCC had their placements temporarily modified to serve their sentences in home detention. On March 24, 2020, the trial court issued an order directing VCC to temporarily place Spencer in home detention.

[5] On July 9, 2020, Spencer sent a letter to the trial court seeking permission to permanently serve the balance of his sentence in home detention. The trial

court deemed Spencer's letter to be a motion to modify his sentence, and the State filed an objection. On December 23, 2020, the trial court issued a *sua sponte* order, modifying Spencer's sentence from work release to home detention.

[6] On January 14, 2022, the State filed a motion to correct error, claiming that Spencer's voluntary manslaughter conviction qualified him as a violent criminal and that any modification required the consent of the prosecutor if 365 days had passed since his original sentencing. Spencer filed his objection, the trial court held a hearing on September 24, 2021, and additional briefing was thereafter submitted by the parties.¹ On February 14, 2022, the trial court, *sua sponte* vacated its Order modifying Spencer's sentence to home detention. The Order provided, in pertinent part, that

Indiana law is very clear that this [c]ourt lacked the legal authority to modify [Spencer's] sentence. As previously noted, [] [Spencer] was convicted of a violent felony (voluntary manslaughter) and, as a result, Ind. Code § 35-38-1-17(k) does not permit any modification of the sentence if 365 days have passed without the consent of the Prosecuting Attorney.

In the instant case, [] [Spencer] was originally sentenced on June 21, 2018 and, therefore, more than 365 days had passed by the time the [c]ourt received [] [Spencer's] correspondence which

¹ Spencer notes that after briefing, the matter "sat for another 109 days without a ruling by the court. By operation and interpretation of Trial Rule 53.3(A)" the State's motion to correct error was deemed denied, and the period in which the State could have appealed that decision lapsed. (Appellant's Br. p. 5). See Ind. Trial R. 53.3(A) (providing that a motion to correct error will be deemed denied if the trial court fails to set a hearing within 45 days or fails to rule after 30 days after conducting a hearing). The State concedes that its motion to correct error was deemed denied but argues that "the void nature of the *sua sponte* modification of Spencer's sentence" permitted direct collateral attacks at any time and the trial court had the authority to correct its void judgment. (Appellee's Br. p. 10). As we will discuss below, the State's position is correct.

was deemed to be a Motion to Modify Sentence. Ind. Code § 35-38-1-17(k) clearly prohibited this [c]ourt from issuing a *sua sponte* Order on December 23, 2020[,] modifying [] [Spencer’s] sentence. The temporary emergency resulting from the COVID-19 pandemic does not change that fact. Moreover, it would be inconsistent with the principles of justice to allow [] [Spencer] to utilize the circumstances of the pandemic to his advantage and receive a modification of his sentence which the law does not provide. Accordingly, the [c]ourt’s Order of December 23, 2020, must be vacated and the original terms of [] [Spencer’s] sentencing order reinstated.

(Appellant’s App. Vol. II, p. 88).

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

DISCUSSION AND DECISION

[8] Spencer argues that the trial court abused its discretion by vacating its *sua sponte* order modifying his sentence from home detention and restoring his previous work release sentence.

[9] It is the “‘general, if not unanimous, rule that a trial court has the power to vacate an illegal sentence and impose a proper one, even if doing so results in an increased sentence after the erroneous sentence has been partially executed and regardless of whether the sentencing error occurred following a trial or a guilty plea.’” *Ennis v. State*, 806 N.E.2d 804, 809 (Ind. Ct. App. 2004) (quoting *Niece v. State*, 456 N.E.2d 1081, 1084 (Ind. Ct. App. 1983)). Further, pursuant to Indiana Code section 35-38-1-17(k):

A convicted person who is a violent criminal may, not later than three hundred sixty-five (365) days from the date of sentencing, file one (1) petition for sentence modification under this section without the consent of the prosecuting attorney. After the elapse of the three hundred sixty-five (365) day period, a violent criminal may not file a petition for sentence modification without the consent of the prosecuting attorney.

A person who commits voluntary manslaughter is a “violent criminal.” Ind. Code § 35-38-1-17(d)(3). Lastly, we note that “[a] decision that is void has no legal effect at any time and cannot be confirmed or ratified by subsequent action or inaction and is subject to a collateral attack.” *Koonce v. Finney*, 68 N.E.3d 1086, 1090 (Ind. Ct. App. 2017) (citation omitted). Trial courts have the power and duty to correct an erroneously imposed sentence. *Lockhart v. State*, 671 N.E.2d 893, 904 (Ind. Ct. App. 1996).

[10] After pleading guilty to Level 2 felony voluntary manslaughter, Spencer was sentenced on August 17, 2018, to serve a ten-year sentence on work release at VCC. It is undisputed that the request by Spencer to modify his sentence from work release to home detention, which was submitted on July 9, 2020, was more than 365 days after his sentencing, and was made without the express consent of the prosecutor. It is clear that the trial court lacked statutory authority to modify Spencer’s sentence from work release to home detention without the express permission of the prosecutor, and its order of December 23, 2020, was therefore void. Because that order was null and void, its subsequent order setting it aside reflected the trial court’s authority to correct an

erroneously imposed sentence. *See Lockhart*, 671 N.E.2d at 904. As such, we find no error and affirm the trial court.

CONCLUSION

[11] In light of the foregoing, we conclude that the trial court acted within its authority to vacate its prior *sua sponte* order modifying Spencer's sentence, and we affirm the trial court.

[12] Affirmed.

[13] Bailey, J. and Vaidik, J. concur