

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.



ATTORNEYS FOR APPELLANT

Theodore E. Rokita
Attorney General of Indiana

Samuel J. Dayton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

State of Indiana,
Appellant-Plaintiff,

v.

Heather Anderson,
Appellee-Defendant.

November 16, 2022

Court of Appeals Case No.
22A-CR-1377

Appeal from the Hendricks
Superior Court

The Honorable Robert W. Freese,
Judge

Trial Court Cause No.
32D01-1404-FA-5

Mathias, Judge.

- [1] The State appeals the Hendricks Superior Court’s modification of Heather Anderson’s sentence over the prosecuting attorney’s objection. We reverse.

Facts and Procedural History

- [2] In March 2017, Anderson pleaded guilty to Class B felony incest pursuant to a plea agreement with the State. In exchange for her plea, the State agreed to dismiss other pending charges. Anderson's plea agreement required her to serve sixteen years in the Department of Correction, with the express condition that those sixteen years "may not be served on work release or home detention," followed by four years suspended to probation. Appellant's App. Vol. 2, p. 160. The trial court accepted Anderson's plea agreement and sentenced her accordingly.
- [3] In November 2021, well before her projected release date, Anderson moved to have the remainder of her placement in the Department of Correction modified to "additional probation or home detention." Appellant's App. Vol. 3, p. 12. The trial court set Anderson's motion for a hearing, and, at that hearing, the State made clear that it "wouldn't be agreeing at this time to modify the plea agreement," which had "expressly said . . . the executed portion couldn't . . . be spent on work release and home detention . . ." Tr. Vol. 2, p. 6. The court stated that it "probably should not have agreed to that term." *Id.* at 8. The court then granted Anderson's motion to modify her sentence such that the remainder of her time in the Department of Correction would instead be served as "a direct commitment to home detention." *Id.* at 9. The State filed a motion to correct error, which the trial court denied. This appeal ensued.

Discussion and Decision

- [4] The trial court erred as a matter of law when it granted Anderson’s motion to modify her sentence over the objection of the prosecuting attorney.¹ [Indiana Code section 35-38-1-17\(e\) \(2021\)](#) is unambiguous:

At any time after:

(1) a convicted person begins serving the person’s sentence; and

(2) the court obtains a report from the department of correction concerning the convicted person’s conduct while imprisoned;

the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing. *However, if the convicted person was sentenced under the terms of a plea agreement, the court may not, without the consent of the prosecuting attorney, reduce or suspend the sentence and impose a sentence not authorized by the plea agreement.* The court must incorporate its reasons in the record.

(Emphasis added.)

- [5] Here, the trial court modified Anderson’s sentence in a manner that imposed a sentence not authorized by Anderson’s plea agreement in two respects. First,

¹ As Anderson has not filed an Appellee’s brief, we may reverse the trial court’s judgment on the showing of prima facie error. *E.g., Salyer v. Washington Reg. Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020). The State readily meets that burden on appeal.

Anderson’s plea agreement expressly required her to serve sixteen years in the Department of Correction; the trial court’s modification of her sentence violates that term. Second, her plea agreement expressly stated that no part of that executed sentence would be served on home detention; the court’s modification of Anderson’s sentence also violated that term. And, again, the court’s modification of Anderson’s sentence was without the consent of the prosecuting attorney. Thus, the trial court’s judgment is contrary to [Indiana Code section 35-38-1-17\(e\)](#).

[6] We also agree with the State that, the trial court’s contravention of [Indiana Code section 35-38-1-17\(e\)](#) notwithstanding, the court imposed an illegal sentence when it modified Anderson’s placement to a “direct commitment to home detention.” Tr. Vol. 2, p. 9. Anderson pleaded guilty to Class B felony incest, which is a sex crime under [Indiana Code section 35-46-1-3](#). Thus, pursuant to [Indiana Code section 35-38-2.6-1\(b\)\(1\)](#), she is not eligible for such a direct placement. The trial court had no authority to modify Anderson’s sentence as it did.

[7] The trial court’s modification of Anderson’s sentence is contrary to law. Accordingly, we reverse the trial court’s judgment.

[8] Reversed.

Robb, J., and Foley, J., concur.