

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

James Huspon,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*

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May 1, 2024

Court of Appeals Case No.  
23A-CR-2752

Appeal from the Marion Superior Court  
The Honorable Charles F. Miller, Judge

Trial Court Cause No.  
CR85-295C

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**Memorandum Decision by Judge Bradford**  
Chief Judge Altice and Judge Felix concur.

## **Bradford, Judge.**

### Case Summary

- [1] In the mid- to late-1980s, James Huspon was convicted of murder, felony murder, robbery, and burglary. Huspon has been incarcerated since 1985, and he has sought post-conviction relief and clemency from the governor and moved the trial court multiple times to modify his sentence. Huspon's post-conviction relief petition was partially successful, but his other requested relief has been denied. In 2023, Huspon filed a motion to modify his sentence such that his robbery and burglary convictions would run concurrently instead of consecutively, making him eligible for immediate release. The trial court denied his motion, which Huspon contends was an abuse of discretion. We affirm.

### Facts and Procedural History

- [2] In its opinion addressing Huspon's direct appeal of his convictions and sentence, the Indiana Supreme Court delineated the following facts:

At approximately 5:30 a.m. on December 12, 1985, Juana Scott was delivering the morning newspaper to homes on Moreland Avenue in Indianapolis. She saw three black males running out of a house on Moreland, and when they saw her, they stopped and huddled together. When the three men proceeded down an alley, Scott continued delivering her newspapers. When she delivered the paper to 936 Moreland, the home of Boris Tom, she noticed the lights were on in the home, which was unusual. She looked inside the home and saw a man lying face down on the

floor. She realized this was the home from which she had seen the three men running. She called the police.

When police arrived at Tom's house, his car engine was still warm, and he was still alive. However, Tom later died from a gunshot wound to the chest. In Tom's home, police found obscene handwritten messages on the walls indicating the victim was homosexual and that they intended to kill him.

Later in the morning on December 12, 1985, appellant's neighbor saw two young black men, who were carrying what appeared to be a gun, enter a vacant house on the block. Police were called and they arrested the two men, who were appellant's brother and appellant's cousin, outside of appellant's home. Police obtained permission from appellant's mother to search his home for the purpose of conducting an investigation for stolen or sawed-off weapons. In appellant's room, police found a pair of binoculars which were later identified as belonging to Tom. Also they found a commemorative coin and a car key belonging to Tom. Several miniature liquor bottles were found hidden in appellant's home and in the vacant house next door. Tom had possessed similar bottles. The police found more bottles in the binocular case which they found outside of Tom's home.

A handwriting expert compared the handwriting of appellant and his brother with that of the handwriting on the walls in Tom's home. The expert testified that most of the writing on the walls was done by appellant. A fingerprint found on a tissue box in Tom's home was determined to be that of appellant's brother.

Kenneth Edwards, an acquaintance of appellant, testified that before Tom was killed, appellant told him that he was going to break into the house at 936 Moreland and that Tom was a "fag."

Robert Henson testified that when he was incarcerated with appellant in the Marion County Jail, he heard appellant say that he, his brother, and his cousin went into a man's house, took stuff, and left. They came back later when the man was there and appellant's brother shot him.

*Huspon v. State*, 545 N.E.2d 1078, 1080 (Ind. 1989).

- [3] A jury found Huspon guilty on all four counts, after which the trial court sentenced him to an aggregate 160-year term of incarceration. The Indiana Supreme Court affirmed Huspon's convictions and sentence on direct appeal. *Id.* at 1085.
- [4] In 2001, Huspon petitioned the trial court for post-conviction relief. In 2003, after Huspon had amended his petition, the post-conviction court granted his petition in part, finding that his convictions for murder, robbery, and burglary as a Class A felony violated Indiana's prohibition against double jeopardy and that his trial counsel had been ineffective for failing to make that argument. The post-conviction court determined that Huspon's robbery and burglary convictions should have been reduced to Class B felonies and that he should be resentenced to twenty years on each, thereby reducing his aggregate sentence to 100 years. In 2004, this court affirmed the post-conviction relief court's order.
- [5] In 2006, Huspon unsuccessfully sought clemency from the governor. That same year, Huspon requested that this court allow him to file a successive petition for post-conviction relief, which motion this court denied. In 2014, Huspon moved the trial court to modify his sentence, to which the State

objected, and which the trial court denied. In February of 2017, Huspon again filed a motion requesting the trial court modify his sentence and move him from the Department of Correction to Marion County Community Corrections. The next month, the trial court denied Huspon's motion.

[6] In August of 2023, Huspon again filed a motion requesting that the trial court modify his sentence by allowing him to serve his robbery and burglary sentences concurrently, which would entitle him for immediate release to parole. A few months later, the trial court held a hearing on the matter, at which Huspon testified that he had been rehabilitated and is not a danger to society, especially given his paralysis. The State acknowledged that there is not "much risk that [Huspon] is going to be a danger to the community" and left it to the trial court's discretion whether Huspon should be released from his incarceration. Tr. Vol. II p. 5. On October 19, 2023, the trial court denied Huspon's motion.

## Discussion and Decision

[7] Generally, a trial court has no authority over a defendant after sentencing. *State v. Harper*, 8 N.E.3d 694, 696 (Ind. 2014). Indiana Code section 35-38-1-17, however, provides an exception that enables trial courts, under certain circumstances, to modify a sentence after it has been imposed. *Johnson v. State*, 36 N.E.3d 1130, 1133 (Ind. Ct. App. 2015), *trans. denied*. When a trial court exercises its authority to modify a sentence, it has "broad discretion to" do so. *Merkel v. State*, 160 N.E.3d 1139, 1141 (Ind. Ct. App. 2020). Accordingly, we

review a trial court's denial of a sentence-modification petition for an abuse of discretion. *Newson v. State*, 86 N.E.3d 173, 174 (Ind. Ct. App. 2017), *trans. denied*. An abuse of discretion occurs when the trial court's decision is "clearly against the logic and effects of the facts and circumstances before it, or the reasonable, probable and actual deductions to be drawn therefrom." *Troxell v. State*, 956 N.E.2d 164, 165 (Ind. Ct. App. 2011) (citation omitted).

[8] Huspon argues that his "life and circumstances have changed dramatically" since his sentencing, thereby rendering a modification appropriate. Appellant's Br. p. 12. During his incarceration, Huspon advanced his education by earning his general education diploma and associate's and bachelor's degrees from Ball State University. Moreover, Huspon has been recognized for his work in helping other inmates learn to read. Further, in 2009, another inmate stabbed Huspon in the back, severing his spinal cord and permanently paralyzing him from the chest down. In the last ten years, Huspon has had no disciplinary write-ups. Huspon has completed his sentences for his murder and burglary convictions and is currently serving his sentence for robbery. His current projected release date is May 12, 2032. While it may be true that Huspon's life and circumstances have changed since he was initially incarcerated, we disagree that such changes necessitate sentence modification.

[9] A trial court is not required to grant a petitioner's modification request simply because the petitioner can cite positive achievements, improvements, and rehabilitative efforts made during his incarceration. *Newman v. State*, 177 N.E.3d 888, 891 (Ind. Ct. App. 2021), *trans. denied*. Further, we have

previously concluded that the “heinousness of a person’s crime alone can serve as the basis for denying a sentence reduction.” *Myers v. State*, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999).

[10] Here, the trial court appeared concerned that modification of Huspon’s sentence would potentially depreciate the seriousness of his offenses. Again, Huspon was convicted of murder, felony murder, robbery, and burglary after apparently targeting a victim that he had believed was gay. In addition, Huspon had written derogatory comments on his victim’s walls before leaving him for dead. Given the nature of Huspon’s crimes and the fact that positive achievements and rehabilitative efforts do not require the trial court to grant modification, we cannot say that the trial court abused its discretion in denying Huspon’s modification petition.

[11] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.

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