

Appellant-petitioner Richard Emmons appeals the trial court's denial of his motion for sentence modification. Specifically, Emmons argues that the trial court incorrectly concluded that, without the State's consent, it was without jurisdiction to modify Emmons's sentence. Finding that the trial court properly denied Emmons's motion, we affirm.

FACTS

On June 21, 2001, the State charged Emmons with class C felony robbery, and on July 7, 2001, the State added a second count of class C felony robbery. On July 23, 2001, the State added two counts of class C felony possession of a schedule II controlled substance, one count of class D felony theft, and alleged that Emmons was a habitual offender.

On February 25, 2002, the parties entered into a plea agreement under which Emmons pleaded guilty but mentally ill to the two counts of robbery and to being a habitual offender. In exchange, the State dismissed the remaining counts and agreed not to file a petition to revoke probation in a separate cause. Sentencing was left to the trial court's discretion.

On March 22, 2002, the trial court sentenced Emmons to concurrent eight-year terms on the two robbery convictions. This sentence was enhanced by an additional twelve-year term on the habitual offender finding, for a total term of twenty years. The trial court ordered that seventeen years of the sentence be executed at the Indiana Department of Correction and that the remaining three years be served on supervised

probation. The trial court placed two conditions on Emmons's supervised probation, namely, that he complete "in-patient treatment at a facility such as Richmond State Hospital," and that once he finished treatment he "be placed on [house] arrest with the Tippecanoe County Community Corrections Program for the remainder of his probation." Appellant's App. p. 38.

On June 18, 2010, Emmons filed his pro se "Motion For 'Hardship Revision' of Sentencing Order," requesting that he be removed from house arrest and remain on supervised probation only. *Id.* at 40. Emmons stated that he was disabled and on a fixed monthly income of \$674. Emmons pointed out that the cost of home detention was \$9 per day, which was in addition to probation fees. Emmons emphasized that he was in jeopardy of being incarcerated for failure to pay the required fees.

On July 2, 2010, the State filed its response to Emmons's motion, objecting to any modification of his sentence. The State asserted that sentence modifications are governed by Indiana Code section 35-38-1-17, which provides that a trial court may modify a sentence for up to one year after a defendant begins to serve his sentence, but once that time has passed, it must have the approval of the prosecuting attorney.

On August 5, 2010, the trial court held a hearing on Emmons's motion. After explaining that it could not grant Emmons's motion because the State objected, the trial court denied the motion. Emmons now appeals.

DISCUSSION AND DECISION

Emmons argues that the trial court erred by denying his motion to modify his sentence. More particularly, Emmons contends that he did not request a sentence modification, but instead, he requested a modification of the conditions of his probation, which a trial court may grant at any time under Indiana Code section 35-38-2-1.

Generally, a trial court has no authority over a criminal defendant after the court pronounces its sentence. Keys v. State, 746 N.E.2d 405, 406 (Ind. Ct. App. 2001). Accordingly, “[a]fter issuing a final judgment, a court retains only such continuing jurisdiction as is permitted by the judgment or granted to the court by statute or rule.” Lewis v. State, 754 N.E.2d 1019, 1020 (Ind. Ct. App. 2001).

Indiana Code section 35-38-1-17 gives a trial court authority, under limited circumstances, to modify a criminal defendant’s sentence. Specifically, the statute provides, in relevant part, that

[w]ithin three hundred sixty-five days (365) after . . . a convicted person begins serving the person’s sentence . . . the court may reduce or suspend the sentence. . . . If more than three hundred sixty-five (365) days have elapsed since the convicted person began serving the sentence . . . the court may reduce or suspend the sentence, subject to the approval of the prosecuting attorney. . . .

Consequently, “[u]pon expiration of the 365-day limit . . . the court loses further jurisdiction over the defendant insofar as the alteration of the defendant’s sentence is concerned.” Lewis, 754 N.E.2d at 1020.

Here, Emmons began serving his sentence in March 2002. Thus, Emmons's motion for sentence modification that was filed in 2010 was clearly beyond the 365-day limitation. And because the prosecuting attorney objected, the trial court was without jurisdiction to modify Emmons's sentence.

Nevertheless, Emmons contends that the trial court could have granted his motion pursuant to Indiana Code section 35-38-2-1(b), which gives a trial court the authority to modify the conditions of probation. Although we observe that Indiana Code section 35-38-2-1(b) seems to indicate that a trial court may modify the conditions of probation "at any time," this Court has determined that the trial court's authority to modify the conditions of probation at any time applies only to defendants who are in court on a petition to revoke probation. See Ferrill v. State, 904 N.E.2d 323, 326 (Ind. Ct. App. 2009) (concluding that the trial court is without authority to modify the terms of defendant's probation unless the defendant first violates the conditions of his probation).

That being said, in 2005, the General Assembly enacted Indiana Code section 35-38-2-1.8, which specifically gives trial courts the authority to modify probation terms even in the absence of a violation. Collins v. State, 911 N.E.2d 700, 708 (Ind. Ct. App. 2009). However, the statute states that "[t]he court may hold a new probation hearing at any time during a probationer's probationary period . . . upon motion of the probation department or upon the court's motion." I.C. § 35-38-2-1.8(b) (emphasis added).

Here, Emmons filed the motion that invoked the hearing for changes to his probation conditions. Consequently, by its express language, Indiana Code section 35-38-2-1.8 is inapplicable, and we affirm the decision of the trial court.

The judgment of the trial court is affirmed.

VAIDIK, J., and MATHIAS, J., concur.