

IN THE
COURT OF APPEALS OF INDIANA

No. _____

STATE OF INDIANA,
Appellant-Plaintiff,

v.

COLLIN R. THOMAS,
Appellee-Defendant.

Appeal from the Dubois Circuit
Court,

No. 19C01-1907-F3-643,

The Honorable Nathan A. Verkamp,
Judge.

NOTICE OF APPEAL

Party Information: State of Indiana
Office of the Indiana Attorney General
302 W. Washington St., IGCS 5th Floor
Indianapolis, IN 46204

Requesting service of orders and opinions of the Court by:
☒ E-mail ☐ FAX or ☐ U.S. Mail (choose one)

ATTORNEY REPRESENTING PARTY FILING NOTICE OF APPEAL

EVAN MATTHEW COMER
Deputy Attorney General
Attorney No. 34546-72

OFFICE OF INDIANA ATTORNEY GENERAL TODD
ROKITA
Indiana Government Center South
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46204-2770

IMPORTANT: Each attorney specified above:

- (a) certifies that the contact information listed for him/her on the Indiana Supreme Court Roll of Attorneys is current and accurate as of the date of this Notice of Appeal;
- (b) acknowledges that all orders, opinions, and notices in this matter will be sent to the attorney at the email address(es) specified by the

attorney on the Roll of Attorneys regardless of the contact information listed above for the attorney; and

- (c) understands that he/she is solely responsible for keeping his/her Roll of Attorneys contact information accurate, see Ind. Admis. Disc. R. 2(A).

INFORMATION FOR JUDGMENT/ORDER BEING APPEALED

Date of Judgment/Order being appealed: **April 18, 2023**

Title of Judgment/Order being appealed: **Sentence Modification Order**

Date Motion to Correct Error denied ☐ or deemed denied ☒, if applicable: **June 30, 2023**

If case was heard by a magistrate, date trial judge approved judgment or order: **N/A**

Basis for Appellate Jurisdiction:

- ☒ Appeal from a Final Judgment, as defined by Appellate Rule 2(H) and 9(I)
- ☐ Appeal from an interlocutory order, taken as of right pursuant to Appellate Rule 14(A),(C),(D)
- ☐ Appeal from an interlocutory order, accepted by discretion pursuant to Appellate Rule 14(B)(3)
- ☐ Expedited Appeal, taken pursuant to Appellate Rule 14.1

This appeal will be taken to:

- ☒ Court of Appeals of Indiana, pursuant to Appellate Rule 5
- ☐ Indiana Supreme Court, pursuant to Appellate Rule 4

Trial Court Clerk/Administrative Agency/Court Reporter Instructions

Pursuant to Appellate Rule 10 or 14.1(C), the clerk of the Dubois Circuit Court is requested to assemble the Clerk's Record, as defined in Appellate Rule 2(E).

Pursuant to Appellate Rule 11 or 14.1(C), the court reporter of the Dubois Circuit is requested to transcribe, certify, and file with the clerk of the Dubois Circuit Court the following hearings of record, including exhibits:

Hearing on Defendant's Motion for Change of Placement, held on April 18, 2023;

Hearing on Defendant's Motion for Change of Placement, held on April 17, 2023; and

Sentencing Hearing, held on June 17, 2020.

Public Access

Was the entire trial court or agency record sealed or excluded from public access?

☐ Yes ☒ No

Was a portion of the trial court or agency record sealed or excluded from public access?

☐ Yes ☒ No

If yes, which provision in the Rules on Access to Court Records provides the basis for this exclusion:

If Rule 6 of the Rules on Access to Court Records provides the basis for this exclusion, was the trial court or agency order issued in accordance with the requirements of this rule?

☐ Yes ☐ No

APPELLATE ALTERNATIVE DISPUTE RESOLUTION

If civil case, is Appellant willing to participate in Appellate Dispute Resolution?

☐ Yes ☐ No

If yes, provide a brief statement of the facts of the case. (Attach additional pages as needed.)

ATTACHMENTS

The following SHALL be attached to this Notice of Appeal (in all appeals):

☒ Copy of judgment or order being appealed

The following SHALL be attached to this Notice of Appeal if applicable (check if applicable):

☐ Copy of the trial court or Administrative Agency's findings and conclusion (in civil cases)

☒ Copy of the sentencing order (in criminal cases)

- ☒ Order denying Motion to Correct Error or, if deemed denied, copy of Motion to Correct Error
- ☐ Copy of all orders and entries relating to the trial court or agency's decision to seal or exclude information from public access
- ☐ If proceeding pursuant to Appellate Rule 14(B)(3), copy of Order from Court of Appeals accepting jurisdiction over interlocutory appeal
- ☐ The documents required by Rule 40(C), if proceeding in forma pauperis

CERTIFICATION

By signing below, I certify that:

- (1) This case ☐ does ☒ does not involve an interlocutory appeal; issues of child custody, support, visitation, adoption, paternity, determination that a child is in need of services, termination of parental rights; or an appeal entitled to priority by rule or statute.
- (2) I have reviewed and complied, and will continue to comply, with the requirements of Appellate Rule 9(J), 23(F), and the Rules on Access to Court Records on appeal; and,
- (3) I will make satisfactory payment arrangements for any Transcripts ordered in this Notice of Appeal, as required by Appellate Rule 9(H): payment to be made by Dubois County Prosecutor.

Respectfully submitted,

THEODORE E. ROKITA
Indiana Attorney General
Attorney No. 18857-49

By: /s/ Evan Matthew Comer
Evan Matthew Comer
Deputy Attorney General
Attorney No. 34546-72

OFFICE OF THE ATTORNEY GENERAL
Indiana Government Center South
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46204-2770

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on July 6, 2023, the foregoing was filed with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court.

I hereby certify that on July 6, 2023, the foregoing document was served through E-service using the Indiana E-filing System on the following:

BETH E. SCHROEDER
Dubois County Prosecutor

TIMOTHY L. DeMOTTE
Counsel for Collin Thomas

BRIAN D. LUCCHI
Deputy Prosecutor
bdlucchi@duboiscountyin.org

HEATHER SCHNAUS
Court Reporter
Dubois Circuit Court


I also certify that on July 6, 2023, the foregoing was served by mail upon the following in accordance with Rule 24:

THE HON. NATHAN VERKAMP
Judge
Dubois Circuit Court
1 Courthouse Square
Jasper, Indiana 47576

HEATHER SCHAUS
Court Reporter
Dubois Circuit Court
1 Courthouse Square
Jasper, Indiana 47576

AMY L. KIPPENBROCK
Dubois County Clerk of Courts
1 Courthouse Square
Jasper, Indiana 47576

/s/ Evan Matthew Comer
Evan Matthew Comer

OFFICE OF THE ATTORNEY GENERAL
Indiana Government Center South, Fifth Floor
302 West Washington Street

Indianapolis, Indiana 46204-2770



STATE OF INDIANA

)

IN THE DUBOIS CIRCUIT COURT

) SS:

COUNTY OF DUBOIS

)

CAUSE NO: 19C01-1907-F3-000643

STATE OF INDIANA

)

VS

)

)

COLLIN R. THOMAS

)

)

MOTION TO CORRECT ERROR

Comes now the State of Indiana by Brian D. Lucchi, Deputy Prosecuting Attorney for the 57th Indiana Judicial Circuit, and advises as follows:

1. A convicted person who is a violent criminal may, not later than three hundred sixty-five days from the date of sentencing, file one petition for sentence modification under I.C. 35-38-1-17 without the consent of the prosecuting attorney. After the elapse of the three hundred sixty-five day period, a violent criminal may not file a petition for sentence modification without the consent of the prosecuting attorney. I.C. 35-38-1-17(k).
2. Under I.C. 35-38-1-17(d), the defendant is a "violent criminal" based upon his conviction for Armed Robbery, a Level 3 Felony.
3. On June 17, 2020, the Court sentenced the defendant to nine (9) years at the Indiana Department of Correction on Count 1, Armed Robbery, and one (1) year at the Indiana Department of Correction on Count 3, Pointing a Firearm, with Count 1 and Count 3 running concurrent to each other.
4. On November 2, 2021, the defendant filed his pro se Verified Petition for Direct Placement in the Community Corrections Program.
5. On November 19, 2021, the defendant filed his pro se Motion to Modify Sentence.
6. On November 29, 2021, the Court denied the defendant's pro se Motion for Modification.
7. On December 12, 2022, the defendant, by counsel, filed his Verified Petition for Modification of Sentence and Request for Hearing.
8. On December 14, 2022, the State filed its Objection to Defendant's Motion for Modification of Sentence.
9. On March 8, 2023, the defendant, by counsel, filed his Petition to Modify Placement from IDOC to Community Corrections.
10. On April 18, 2023, the Court granted the defendant's motion and modified the defendant's sentence, allowing the defendant to serve the remainder of his sentence in

the Dubois County Work Release Program. The State objected to said modification. The Court's modification order appears to have been inadvertently dated March 18, 2023; however, the order was issued on April 18, 2023.

11. The modification request that the Court granted was filed later than three hundred sixty-five days from the date of sentencing in the above-captioned cause. Further, the modification request that the Court granted was not the defendant's first modification request in the above-captioned cause. Because the State has not consented to a modification, the Court's granting of the defendant's request for modification is outside of what is allowed under I.C. 35-38-1-17(k).

WHEREFORE, the State respectfully requests that the Court reinstate the defendant's original sentence in the above-captioned cause, order the defendant to resume serving his sentence at the Indiana Department of Correction, and for all appropriate relief.

Respectfully submitted,
/s/Brian D. Lucchi

Brian D. Lucchi
Deputy Prosecuting Attorney
602 Main Street, 2nd Floor
Jasper, Indiana 47546

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the defendant by his attorney, Timothy DeMotte, by e-filing on or about the date of filing the same.

/s/ Brian D. Lucchi
Brian D. Lucchi

STATE OF INDIANA)
)
COUNTY OF DUBOIS) SS:

IN THE DUBOIS CIRCUIT COURT

STATE OF INDIANA)
)
 vs.)
)
COLLIN R. THOMAS)

CAUSE NO. 19C01-1907-F3-000643

SENTENCE MODIFICATION ORDER

Comes now the State of Indiana by Deputy Prosecuting Attorney, Brian D. Lucchi, and comes also the defendant, Collin R. Thomas, in person and with counsel, Timothy L. DeMotte. Court holds hearing on April 17, 2023, on defendant's Motion for Change of Placement. The Court now grants Defendant's Motion. The Defendant shall serve the balance of his sentence in the Dubois County Work Release Program.

IT IS SO ORDERED this 18th day of March, 2023.


NATHAN A. VERKAMP, JUDGE
DUBOIS CIRCUIT COURT

STATE OF INDIANA) IN THE DUBOIS CIRCUIT COURT
COUNTY OF DUBOIS) CASE NO: 19C01-1907-F3-000643
STATE OF INDIANA
VS.
COLLIN R. THOMAS

JUDGMENT OF CONVICTION AND SENTENCING ORDER

Identification of the Defendant:

Name:	Address:	SSN:	OLN/License State:
Collin R. Thomas	[REDACTED]	***-**-****	[REDACTED]
Height:	Weight:	Sex:	Race:
5 Ft. 6 In.	219 Lbs.	Male	White
Hair Color:	Eye Color:	DOB:	Distinguishing Marks:
Blond or Strawberry	Blue	[REDACTED]	
DOC Number:	FBI Number:	State Police ID:	TCN:
			[REDACTED]

The State of Indiana appears by Prosecuting Attorney Brian Dean Lucchi. The Defendant appears by counsel, Thomas A. Dysert.

On July 02, 2019, the Defendant was charged with the following crimes:

Offense Date	Count	Charge	Statute	Class & Degree
07/01/2019	1	35-42-5-1(a)(1)/F3: Armed Robbery-Taking property by force or threatening use of force while armed	35-42-5-1(a)(1)	Felony 3
07/01/2019	2	35-42-5-1(a)(2)/F3: Armed Robbery-Taking property by putting someone in fear while armed with a dead	35-42-5-1(a)(2)	Felony 3
07/01/2019	3	35-47-4-3(b)/F6: Pointing a Firearm at Another	35-47-4-3(b)	Felony 6
07/01/2019	4	35-43-4-2(a)/F6: Theft where value of property is between \$750 & \$50k.	35-43-4-2(a)	Felony 6
07/01/2019	5	35-43-1-2(a)/MB:Criminal Mischief	35-43-1-2(a)	Misdemeanor Class B

The Defendant, being duly advised of his/her rights, enters a Plea of Guilty.

The Court ACCEPTS the Plea Agreement and enters Judgment of Conviction. The sentencing hearing was held on June 17, 2020.

The Court, having considered the written Pre-Sentence Investigation and having heard and considered evidence, now finds:

Count	Charge	Statute	Class & Degree	Judgment
1	35-42-5-1(a)(1)/F3: Armed Robbery-Taking property by force or threatening use of force while armed	35-42-5-1(a)(1)	Felony 3	Plea by Agreement
2	35-42-5-1(a)(2)/F3: Armed Robbery-Taking property by putting someone in fear while armed with a dead	35-42-5-1(a)(2)	Felony 3	Dismissed
3	35-47-4-3(b)/F6: Pointing a Firearm at Another	35-47-4-3(b)	Felony 6	Plea by Agreement
4	35-43-4-2(a)/F6: Theft where value of property is between \$750 & \$50k.	35-43-4-2(a)	Felony 6	Dismissed
5	35-43-1-2(a)/MB:Criminal Mischief	35-43-1-2(a)	Misdemeanor Class B	Dismissed

IT IS THEREFORE ORDERED that the Defendant is sentenced to the following:

Count	Sentence Years / Days	Suspended	Confinement Location	Concurrent	Consecutive	With (Count Or Case Numbers)	
						Concurrent	Consecutive
1	9 Year(s) and 0 Day(s)	0 Year(s) and 0 Day(s)	Indiana Department of Correction	X		Count 3	
3	1 Year(s) and 0 Day(s)	0 Year(s) and 0 Day(s)	Indiana Department of Correction	X		Count 1	

352 days credit and 117 days good time credit. Defendant shall pay Court costs of \$185.00 within one (1) of release from incarceration. Defendant shall pay restitution to Fast Track Marathon.
352 days credit and 117 days good time credit.

The Defendant was confined on this case 352 Days; and 352 Days prior to sentencing. This represents the *actual* number of days confined, not good time credit.

The Defendant is advised of his/her right to appeal his conviction herein. If the Defendant chooses to appeal, he must file a Notice of Appeal with the trial court clerk within thirty (30) days after the entry of a final judgment.

SO ORDERED on this the 17th day of June, 2020.


NATHAN A. VERKAMP, Judge
Dubois Circuit Court