

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

FILED

06/27/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. GREGORY LAVELLE LILLY**

**Appeal from the Criminal Court for Sumner County  
No. 70-2020 Dee David Gay, Judge**

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**No. M2022-00958-CCA-R3-CD**

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The Appellant, Gregory Lavelle Lilly, appeals the trial court's order denying his motion for a reduction of sentence. Tenn. R. Crim. P. 35. Upon review of the motion filed by appointed counsel, and in light of the record on appeal, the Court hereby affirms the order of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court Affirmed  
Pursuant to Court of Criminal Appeals Rule 20**

JILL BARTEE AYERS, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TIMOTHY L. EASTER, JJ., joined.

Ethan C. Ingham, Nashville, Tennessee, for the Appellant, Gregory Lavelle Lilly.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General, for the Appellee, State of Tennessee.

**MEMORANDUM OPINION**

The Appellant is appealing the denial of his motion for a sentence reduction. *See* Tenn. R. Crim. P. 35. The record has been filed. Appointed counsel now moves this Court to withdraw pursuant to Court of Criminal Appeals Rule 22. Counsel contends this appeal is frivolous under *Anders v. California*, 386 U.S. 738 (1967). The Appellant did not respond to counsel's motion and the time for doing so has now expired. Having reviewed the record on appeal, including counsel's motion to withdraw and the accompanying *Anders* brief, the Court agrees this appeal is frivolous. Tenn. Ct. Crim. App. R. 22(B) (a

frivolous appeal “is one that is so readily recognizable as devoid of merit that there is little, if any, prospect that it can ever succeed.”).

The Appellant pled *nolo contendere* on December 20, 2021, to two misdemeanor shoplifting charges and received agreed-upon consecutive sentences of eleven-months and twenty-nine days to be served concurrently with the sentences imposed in three Davidson County cases. The Appellant was represented by the Office of the Public Defender during the plea negotiations. Thereafter, on May 23, 2022, the Appellant prepared a *pro se* motion for a sentence reduction which was filed at the trial court on May 27, 2022. Tenn. R. Crim. P. 35. On June 27, 2022, the trial court denied that motion on the merits finding that the Appellant agreed to the sentences imposed. The court did not address the timing of the motion. However, Rule 35(a) provides that a motion for a reduction of sentence must be filed within 120 days after sentence is imposed. Tenn. R. Crim. P. 35. The rule states no extensions of time shall be allowed and no other actions shall toll the time limitation. *Id.* The Appellant in this case did not file his motion before the expiration of the 120-day deadline. Thus, the trial court should have dismissed the Appellant’s motion as untimely. *State v. Patterson*, 564 S.W.3d 423, 429 (Tenn. 2018) (120-day deadline cannot be extended or tolled); *State v. Sabrina Howard*, No. W2014-02309-CCA-R3-CD, 2015 WL 8334629 (Tenn. Crim. App., Dec. 9, 2015) (trial court lacks jurisdiction to consider untimely filed motion to reduce sentence).

Accordingly, the trial court’s order denying the motion to reduce sentence is hereby affirmed pursuant to Court of Criminal Appeals Rule 20. Furthermore, counsel’s motion to withdraw is granted. As directed by Rule 22(F), the Court hereby notifies the Appellant that he has the right to file a *pro se* application for permission to appeal to the Supreme Court within sixty days. *See* Tenn. R. App. P. 11. Because the Appellant was declared indigent, costs are taxed to the State. The Clerk shall forward a copy of this order to counsel and the Appellant.

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Judge Jill Bartee Ayers