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FOR IMMEDIATE RELEASE

From: Eric M. Hoffman, Prosecuting Attorney
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**JUDGE DOWLING GRANTS EARLY RELEASE OF ANOTHER CONVICTED
DRUG DEALER DESPITE OBJECTIONS OF PROSECUTORS**

Muncie Indiana – On today's date Delaware County Circuit Court Judge 2 Kimberly Dowling released convicted felon and drug dealer Tyson McCoy from prison over the adamant objections of prosecutors. McCoy was convicted of Dealing in Cocaine, a Level 4 Felony. The prosecutor's office adamantly disagrees with the decision to release Tyson McCoy back into the community. The State, through Deputy Prosecutor Andrew Ramirez filed a formal objection to early release. A copy is attached.

McCoy has two (2) prior felony and eight (8) misdemeanor convictions. His prior criminal convictions include: Possession of Cocaine, a Class C Felony, Possession of Marijuana, a Class D Felony, Possession of Marijuana, a Class A Misdemeanor, driving while suspended Class A misdemeanor, criminal mischief, a Class B misdemeanor, and public intoxication, a Class B Misdemeanor.

At sentencing in this particular case, the Court found multiple serious aggravating circumstances supporting an enhanced sentence:

1. The defendant has a history of criminal behavior. As an adult the defendant has been convicted of eight (8) misdemeanors and two (2) felonies.
2. The defendant is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility. Prior attempts at correctional treatment and rehabilitation through incarceration and probation have not been successful.
3. There is a distinct pattern of similarity indicated by the defendant's past criminal history.
4. There was a substantial degree of care and planning in the commission of the instant offense.
5. The instant offense was a crime against the community at large. Currently Delaware County Indiana has a severe drug epidemic, and the defendant by his actions contributed to said epidemic.

Additionally in the Court's sentencing order the Court found his actions to be "a danger to society." Therefore, given all of these facts, Delaware County Prosecutor Eric Hoffman said that "I am quite perplexed as to why this early release was granted over our objection. It seems to me that if all of these aggravators were found by the court, prison is exactly where Mr. McCoy belongs."

Delaware County Prosecutor Eric Hoffman said "I do not comprehend nor support the notion of letting a violent felons and drug dealers modify out of prison simply because they have done 'well' while in prison." They are in prison - they are supposed to do well and rehabilitate themselves. In this particular case, the Defendant didn't do well in prison. He received multiple conduct write-ups while in prison. More importantly, there is already a system in place in the law that allows for a reward for good behavior – it's called good time credit. In Indiana, you are only required to serve 75% of your sentence. Inmates are routinely released from prison after serving only 75% because they have behaved well. Moreover, there are other early release programs such as time cuts for completing educational programming. There is a program called the Community Transition Program where the DOC releases inmates from prison a few months early to get reintegrated into society. A sentence modification serves no purpose but to reward the convicted criminal. So many people in our community are suffering from addiction, I will never understand why a drug dealer, one who profits selling poison to others, would be granted the mercy of a sentence reduction. Mercy to the guilty is cruelty to the innocent.

Judge Dowling has granted early release for multiple convicted felons including:

- Ralph Evans. On February 11, 2019, Evans was convicted of Dealing in Cocaine, a Level 4 Felony and sentenced to 6 years in prison. Approximately 2 years later, on April 20, 2021, Judge Dowling granted Evans' request for early release from prison despite objections of prosecutors. Evans has a lengthy criminal record which includes five (5) felony convictions and twelve (12) misdemeanor convictions including Strangulation, a Level 6 Felony, Domestic Battery, a Level 6 Felony, Dealing in Cocaine, a Level 4 Felony, Operating a Vehicle While Intoxicated, a Class D Felony, Operating a Vehicle while Intoxicated Endangering a Person, a Class A Misdemeanor, Battery, Resulting in Bodily Injury, a Class A Misdemeanor, Resisting Law Enforcement, a Class A Misdemeanor
- Marco Contreras-Desilva. Contreras-Desilva was originally sentenced to ten years with 6 years executed in prison and the balance served on probation in October 2019 after he was convicted of Dealing in a Schedule I Controlled Substance (Ecstasy/MDMA), a Level 2 Felony. On July 29, 2021 Judge Dowling granted Desilva early release from prison despite the facts of his case. According to the Affidavit of Probable Cause filed in the case, undercover

investigators made multiple purchases of Ecstasy/MDMA from Contreras-Desilva. Upon his arrest, Contreras-Desilva admitted the following to police investigators that he traveling to Indianapolis to buy the drugs to bring back and sell in Muncie to BSU students. He admitted to dealing ½ to 1 full ounce of Ecstasy/MDMA every week. He typically sells 3 grams at a time for \$300. He admitted to making approximately \$1,400 every week, around \$6,000 every month in profit from his dealing. He dealt drugs for pure financial gain and not to support an addiction. Yet he was released early from prison over the objections of prosecutors.

- Rashid Ross. On October 31, 2017, Ross was convicted of Dealing in a Narcotic Drug, a Level 2 Felony and sentenced to 10 years in prison. A little less than 3 years later, on September 10, 2020, Judge Dowling granted Ross's request for early release from prison over the objection of prosecutors. Ross is a career criminal who has 7 prior theft convictions as an adult including Dealing in a Schedule I Controlled Substance, a Class B Felony, Dealing in a Schedule I Controlled Substance, a Class B Felony, Maintaining a Common Nuisance, a Class D Felony, Dealing in Cocaine, a Class B Felony, Dealing in Cocaine a Class B Felony.
- Danielle Carter. On April 4, 2019, Carter was convicted of Dealing in Methamphetamine, a Level 4 Felony and was sentenced to 5 years in prison. A little over a year later, on August 24, 2020 Judge Dowling granted Carter's request for early release from prison over the objection of prosecutors. In this particular case, Carter sold methamphetamine to an undercover confidential informant on 2 separate occasions. The first sale was for 3.5 grams of meth. The second sale was for 14.1 grams of meth. After her arrest, Carter was interviewed by the police and she confessed that she would normally sell approximately \$10,000 worth of methamphetamine per week.
- Kenneth Herbert. Herbert was originally sentenced to six years in prison in March 2019 after he pleaded guilty to conspiracy to commit fraud on a financial institution. Law enforcement authorities said Herbert had been part of a scheme to create bogus checks, which were then cashed at local credit unions. In November of 2020, Judge Dowling granted Herbert's request to be released early from prison over the objections of prosecutors. Kenneth Herbert is a career criminal. Throughout his adult life he has been charged with at least 40 misdemeanors and 35 felonies. His criminal convictions include conspiracy to commit fraud on a financial institution, domestic battery, driving while suspended, battery resulting in serious bodily injury, check fraud (twice), check deception (10 times), and operating a vehicle while intoxicated

Delaware County Prosecutor Eric Hoffman stated that he is an ardent believer in truth in sentencing and finality in the criminal justice system. In recent years, courts, legal scholars, and commentators often have discussed the lack of finality in the criminal justice system. Absent extraordinary circumstances, once a lawful sentence is imposed, that the offender should complete their sentence. This is especially true of crimes of violence. Anything less would be an insult to the innocent victims of the crime and to the justice system as a whole. Justice demands and victims deserve finality of judgment and truth in sentencing. The law favors finality because litigation, at some point, must end so the courts can hear other business and the parties can move on with their lives. Without a certain end to litigation, the judicial system could come to a standstill, those parties with vast resources could postpone a final judgment and thwart justice, and society could lose faith in the justice system. As former U.S. Supreme Court Justice Powell once said:

At some point the law must convey to those in custody that a wrong has been committed, that consequent punishment has been imposed, that one should no longer look back with the view to resurrecting every imaginable basis for further litigation but rather should look forward to rehabilitation and to becoming a constructive citizen.

The bottom line is, as the old adage says, simple: if you can't do the time, don't do the crime. What is the point of imposing sentences on career criminals and drug dealers when they are allowed to be released after serving a fraction of their sentence?

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for Modification of Sentence. As the Court found in its Order on Sentencing Hearing dated April 25, 2019, the nature of the offense supported an enhanced sentence as the Defendant sold cocaine, which is a danger to society. Furthermore, the Court found that the Defendant's character supported an enhanced sentence as the Defendant has now accumulated three (3) felony convictions and eight (8) misdemeanor convictions.

Additionally:

- a. As found by the Court in its Order on Sentencing Hearing, the Defendant's lengthy criminal history demonstrates a distinct pattern or similarity in the Defendant's past criminal conduct and behavior. The Defendant's criminal history includes several charges and/or convictions for dealing or possessing illegal narcotic drugs.
- b. As found by the Court in its Order on Sentencing Hearing, the Defendant is in need of correctional or rehabilitative treatment that can best be provided by commitment to a penal facility. Prior attempts at correctional treatment and rehabilitation through incarceration and probation have not been successful. The Defendant does have a history of not complying with the probation or direct commitment sentencing alternatives. For instance, the in 18C01-9807-CF-58 the Defendant was sentenced to the Department of Corrections for a period of four (4) years, with six (6) months executed as a direct commitment to work release and the remaining three and one-half (3 ½) years suspended to be served on supervised probation. The Defendant's direct commitment to work release was revoked, and the Defendant's direct commitment was ordered executed at the

Delaware County Jail. Furthermore, following the execution of that portion of the Defendant's sentence, he was placed on supervised probation for the remainder of his sentence. The Defendant's supervised probation was revoked and his entire four (4) year sentence was ordered executed at the Department of Corrections.

- c. As the Court found in its Order on Sentencing Hearing, there was a substantial degree of care and planning in the commission of the instant offense. The Defendant somehow came into possession of cocaine and participated in the arrangement, travel, and ultimate sale, of the cocaine to another person in a hand-to-hand transaction.
 - i. It is important to note that in page 13 of the Presentence Investigation Report filed with the Court on April 17, 2019, the Defendant stated that his actions were not in support of any drug addiction. Rather, the Defendant stated that he was helping a friend who was struggling with drug addiction. As the Court found in its Order on Sentencing Hearing, Delaware County, Indiana has a severe drug epidemic, and the Defendant by his actions, contributed to said epidemic.
- d. The Defendant has accumulated multiple violations with regard to his institutional behavior while incarcerated in the Department of Corrections. Page 6 of the Progress Report outlines that the Defendant has two (2) write up incidents for refusing an assignment. It is important to note that these behavior violations were in September of 2021, approximately one (1) month before the

Defendant asked this Court to modify his sentence. Multiple behavioral violations, especially immediately preceding his request for modification or release from the Department of Corrections, demonstrate that the Defendant has not changed his behavior to align and comply with the rules and expectations of a structured environment.

WHEREFORE, the State of Indiana respectfully objects to the Defendant's Petition for Modification of Sentence and prays the Court deny said Petition and for any and all relief just and proper in the premises.

Respectfully submitted this 17th day of November, 2021.

/s/ Andrew J. Ramirez
Andrew J. Ramirez (#32117-18)
Deputy Prosecuting Attorney
46th Judicial Circuit

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing has been served upon the following counsel of record via electronic service through the Indiana E-filing system, if available, and if not, then via electronic mail, facsimile, U.S. Mail, postage prepaid, or by placing a copy of the same in the appropriate mail receptacle in the Delaware County Justice Center on or before the date of filing.

**Tyson McCoy
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/s/ Andrew J. Ramirez
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