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FOR IMMEDIATE RELEASE

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**JUDGE GRANTS EARLY RELEASE OF CAREER FELON DESPITE
MULTIPLE OBJECTIONS OF PROSECUTORS**

Muncie Indiana – On today's date Delaware County Circuit Court Judge 2 Kimberly Dowling released convicted felon Kenneth Herbert over the adamant objections of prosecutors. 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, Delaware Circuit Court 2 Judge Kimberly Dowling, over the objection of Deputy Prosecutor Andrew Ramirez, granted Herbert's request that the remainder of his prison sentence be suspended. However, his release plans were put on hold after Delaware County Prosecutor Eric Hoffman filed a "motion to correct error." Hoffman maintained Herbert needed the consent of the prosecutor's office before his bid for a sentence rejection could be considered by the judge. After a hearing conducted January 4, 2021, Judge Dowling ruled the state's motion to correct error "is not well taken and is denied." In reinstating Herbert's sentence modification, the judge found the Muncie man had made "great strides" in completing a substance abuse course and other classes while incarcerated. Herbert was then ordered released from custody.



The prosecutor's office adamantly disagrees with the decision to release Kenneth Herbert back into the community.

First, 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.

Second, I do not understand the principle of letting a convicted criminal 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. 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.

Third, 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.

Fourth, the court cites COVID-19 as a reason for Herbert's release. There is no evidence that Herbert has COVID-19 or has even been exposed to the virus. Nonetheless, the Indiana Court of Appeals has very recently addressed this very issue. They said that the COVID-19 pandemic has not created a "get out of jail free card" for Indiana's convicted criminals that overrides existing criminal law. In this case, he has already asked for and has been denied a sentence modification on 2 separate occasions. As we argued in court, not only is he not an appropriate candidate for a modification, since this is his third request, he is required to obtain the consent of the prosecutor. We did not give consent to this modification.

The bottom line is, as the old adage says, simple: if you can't do the time, don't do the crime.

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