

[CAPTION]

**VERIFIED MOTION TO STAY APPEAL FOR THE LIMITED PURPOSE OF RETURNING
JURISDICTION TO THE TRIAL COURT TO DECIDE A SENTENCE MODIFICATION**

The Appellant, by counsel, pursuant to Indiana Rule of Appellate Procedure 37, respectfully requests this Court to stay the appeal for the limited purpose of returning jurisdiction to the trial court to decide a sentence modification. In support of the Motion, the Appellant states the following:

1. On [insert date], the Appellant/Defendant was convicted of [insert offenses], and on [insert date], he was sentenced to [insert sentence].
2. On [insert date], undersigned counsel was appointed as Appellant's appellate attorney.
3. [Explain the status of the appeal, i.e., the appellate brief is due on [insert date] or the appellate brief was filed on [insert date]].
4. On [insert date], the Appellant/Defendant, through his trial attorney [insert name] filed with the trial court, a request for modification of her sentences. The trial court has set the matter for a hearing on [insert date]. See trial court order herein incorporated and referenced as Exhibit A.
5. As a general rule, once an appeal is perfected, the trial court loses subject matter jurisdiction over case. Clark v. State, 727 N.E.2d 18 (Ind.Ct.App. 2000); Jernigan v. State, 894 N.E.2d 1044 (Ind.Ct.App. 2008) (trial court had no jurisdiction to rule on motion for credit time while appeal of sentence was pending); see also Indiana Rules of Appellate Procedure, Rule 9 (trial court loses jurisdiction the date the clerk files Notice of Completion of Clerk's record).
6. Because both the appellate and trial court cannot have simultaneous jurisdiction, Appellant is seeking an order staying the appeal and returning jurisdiction to the trial for the limited purpose of deciding Appellant/Defendant's request for modification of her sentence. Upon the decision by the trial court in the sentence modification, the Defendant would notify this Court of the outcome of the modification by seeking leave to

file a supplemental appendix and if warranted, and amended brief to encompass any sentencing changes the trial court might make.

7. Granting this request would promote judicial economy by permitting the trial court to take expedient action on the request for modification of her sentence, and possibly avoiding appellate litigation of the appropriateness of the original sentence. Moreover, the Appellant's chance of a successful request for modification may be permanently prejudiced by the denial of this request being that prosecutorial consent to a modification is required 365 days after sentencing. I.C. 35-38-1-17(b).

WHEREFORE, the Appellant, by counsel, respectfully requests this Court grant this request, and stay the appeal and remand to the trial court for the limited purpose of returning jurisdiction to the trial court to decide a sentence modification, and for all other relief just and proper in the premises.

(Signature)

VERIFICATION

I affirm under the penalties for perjury, that the foregoing information is true and correct to the best of my knowledge and belief.

(Attorney signature)