

**FOURTH DIVISION
MCFADDEN, P. J.,
WATKINS and PADGETT, JJ.**

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October 16, 2026

In the Court of Appeals of Georgia

A26A1422. PENNINGTON v. THE STATE.

MCFADDEN, Presiding Judge.

Edward Pennington entered guilty pleas to one count of family-violence battery and two counts of third-degree cruelty to children. He appeals from the trial court order denying his motion to modify his sentence. He argues that the trial court could not increase the sentence pronounced orally at the guilty plea hearing, because he had already begun serving that sentence. We hold that Pennington has not shown that he had already begun serving the orally pronounced sentence. So the trial court did not err in denying his motion to modify the later entered written sentence, and we affirm.

1. Background

Pennington entered his guilty pleas, and the court pronounced his sentence as five years of confinement on the count of family-violence battery and 12 months of confinement on each of the two counts of third-degree cruelty to children, with the sentences to run concurrently. The court did not sign the sentence.

After some discussion, including about how much credit Pennington had accrued, the prosecuting attorney notified the court that “at the appropriate time,” the victim of the family-violence battery would like to make a victim-impact statement. The court responded, “the appropriate time would have been before I pronounced sentence[,]” but she allowed the victim to make a statement. Afterwards, the court characterized the victim’s statement as “impactful,” and said that she did not know whether the sentence that she had pronounced took into consideration the harm to the children who were the victims of the child-cruelty counts. She observed that after she had pronounced the sentence, she learned that Pennington would receive almost two years of credit for time served. The court stated that she “need[ed] to reconsider.” The court allowed Pennington to make a statement.

The hearing transcript includes a notation that, after Pennington made his statement, a deputy took him into a holding cell. The court remarked, “They are just

putting him in waist chains. He will be back.” When Pennington returned to the courtroom, the prosecuting attorney argued that the sentences on the two child-cruelty counts should each run consecutively.

Pennington’s attorney objected to the court imposing a different sentence because the court had already pronounced sentence, and the only reason the court had not yet signed the sentence was due to housekeeping matters. After further discussion, the court gave the parties time to research the sentencing issue.

When the hearing reconvened, the court announced that she would sentence Pennington to five years of confinement on the family-violence battery count, a consecutive 12 months of confinement on one of the child-cruelty counts, and another consecutive 12 months of confinement on the second child-cruelty count. The court signed and entered the judgment of conviction and sentence the same day.

The next day, Pennington filed a motion to reconsider the sentence, arguing that it violated the double jeopardy provision of the Fifth Amendment to the United States Constitution. The trial court conducted a hearing and denied the motion, and Pennington filed this appeal.

2. Motion to dismiss

The state has moved to dismiss this appeal on the ground that a motion for reconsideration is not itself directly appealable and does not extend the time for filing a notice of appeal. *Savage v. Newsome*, 173 Ga. App. 271, 271 (326 SE2d 5) (1985). But Pennington’s motion is, in substance, a motion under OCGA § 17-10-1(f) to correct, reduce, or modify his sentence. See *State v. Mondor*, 306 Ga. 338, 340(1) (830 SE2d 206) (2019) (“[t]here is no magic in nomenclature[,] and substance controls our consideration of pleadings” (citation modified)).

Under that statute, a trial court has “the jurisdiction, power, and authority” to modify a sentence “[w]ithin one year of the date upon which the sentence is imposed, or within 120 days after receipt by the sentencing court of the remittitur upon affirmance of the judgment after direct appeal, whichever is later[.]” OCGA § 17-10-1(f)(1). See *Harvey v. State*, 315 Ga. 395, 398(3) (882 SE2d 238) (2022) (sentencing court has authority under the statute to modify or vacate sentence). A trial court’s order denying a timely motion to modify a sentence under OCGA § 17-10-1(f) is directly appealable. *Myrick v. State*, 325 Ga. App. 607, 607 n.1 (754 SE2d 395) (2014). For these reasons, we deny the state’s motion to dismiss this appeal.

3. *Analysis*

Pennington argues that he began serving his sentence when he was taken into custody by the deputy, after the trial court orally had pronounced the sentence, so the trial court could not increase it. We disagree.

Generally,

an oral pronouncement by a trial court during a hearing is not a judgment and, consequently, is not binding until it is reduced to writing and entered as a judgment. Thus, an oral declaration as to what the sentence shall be is not the sentence of the court; the sentence signed by the judge is. Moreover, until an oral pronouncement is memorialized in writing, the trial judge ha[s] broad discretion to amend, alter, or completely change his decision.

Gines v. State, 324 Ga. 46, 61-62(10) (928 SE2d 16) (2026) (citation modified). The court's discretion is limited, "however, where the defendant begins to serve his sentence before the written sentence is entered; under those circumstances, the sentence as pronounced orally may not be increased when memorialized in writing."

Id. at 62(10). Additionally,

[d]ouble jeopardy does prevent a court from imposing additional punishment where doing so would upset the defendant's legitimate expectation of finality in his sentence [but] a defendant may be resentenced after the original sentence has begun being served, so long

as (a) such resentencing is allowed by law, and (b) the defendant has no reasonable expectation in the finality of the original sentence.

Stephens v. State, 289 Ga. 758, 764(2)(b)(2) (716 SE2d 154) (2011) (citation modified).

Pennington has failed to show that he had begun to serve the orally pronounced sentence. The trial court found in the order denying Pennington's motion to reinstate the orally pronounced sentence that Pennington merely sat in the courtroom's holding area under care of the sheriff; that he was not taken to the detention center; and that he was not processed after he entered the plea. .

In *Gines*, our Supreme Court held that a written sentence of "life without parole" did not impermissibly increase a sentence of "life for murder" that the trial court had pronounced at a sentencing hearing, even though the defendant remained in custody following the oral pronouncement of the sentence. *Gines*, 324 Ga. at 62(10). The court noted that the defendant had cited no legal authority, nor had the court found any, to support his proposition that "the mere fact he remained in custody following the sentencing hearing establishe[d] that he immediately began serving his sentence." *Id.* at 62(10). Thus the court concluded that the defendant had not shown that he began serving the orally pronounced sentence before the court signed the

written sentence. *Id.* See also *Stephens*, 289 Ga. at 764(2)(b)(2) (viewing with skepticism, but not deciding, defendant’s argument that he began serving his sentence when the court asked him to go with the deputy at the sentencing hearing). Cf. *Maddox v. State*, 374 Ga. App. 736, 739-40 (913 SE2d 856) (2025) (trial court erred by denying defendant’s motion to reinstate orally pronounced sentence because, among other things, defendant had begun serving orally pronounced sentence when the court had instructed him to meet with a probation officer, he had registered as a sex offender, he had purchased an ankle monitor, and he had temporarily moved into a tent until the probation office deemed his residence to be legal). We hold that under the circumstances of this case, Pennington has failed to show that he began serving the orally pronounced sentence. *Gines*, 324 Ga. at 62(10).

We reject Pennington’s argument that he had a reasonable expectation of finality in the orally pronounced sentence, because when he was taken to the holding area, he believed his sentence was final. See *Stephens*, 289 Ga. at 764(2)(b)(2). The record shows that even before the deputy took Pennington to the holding area, the court had stated that she “need[ed] to reconsider” the orally pronounced sentence.

The trial court had the discretion to change the orally pronounced sentence, and so we affirm. *Gines*, 324 Ga. at 62(10).

Judgment affirmed. Watkins and Padgett, JJ., concur.