

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tony Lionel Love,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 31, 2023

Court of Appeals Case No.
23A-CR-425

Appeal from the Lake Superior
Court

The Honorable Gina L. Jones,
Judge

Trial Court Cause No.
45G03-0109-CF-207

Memorandum Decision by Judge Riley.
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Tony Love (Love), appeals the trial court’s denial of his motion to correct erroneous sentence.

[2] We affirm.

ISSUE

[3] Love presents this court with three issues, which we consolidate and restate as the following single issue: Whether the trial court abused its discretion when it denied his motion to correct erroneous sentence.

FACTS AND PROCEDURAL HISTORY

[4] On September 24, 2001, the State filed an Information, charging Love with murder for knowingly or intentionally killing Mark Lasenby on August 18, 2001.¹ On June 12, 2002, a jury found Love guilty as charged. On July 9, 2002, the trial court held Love’s sentencing hearing. The trial court found no aggravating circumstances and found as the sole mitigating circumstance that Love had “no record of criminal convictions.” (Appellant’s App. Vol. II, p. 3). After considering those factors, the trial court sentenced Love to fifty-five years in the Department of Correction.

¹ As set forth in more detail below, Love filed an incomplete Appendix that did not contain a chronological case summary. We obtained basic information about Love’s murder case by examining the online docket in lower court Cause Number 45G03-0109-CF-207.

[5] On January 9, 2023, Love filed his pro se motion to correct erroneous sentence in which he claimed that “[d]uring sentencing [the] trial judge began to weigh mitigating and aggravating circumstances but fell short to use them in sentencing.” (Appellant’s App. Vol. II, p. 6). In Love’s memorandum of law filed with his motion to correct erroneous sentence, he claimed that the trial court found in its oral sentencing statement that Love’s case presented “many” mitigating circumstances and no aggravating circumstances. (Appellant’s App. Vol. II, p. 10). Love also noted his lack of criminal record. Love argued that the trial court had failed to find unspecified mitigating circumstances that were clearly supported by the record and that it had failed to accord adequate weight to the mitigating circumstance of his criminal record. As a result, Love argued that he should have received a forty-five-year sentence and requested remand for resentencing “or at the very least a sentencing statement explaining why the mitigators were overlooked and the sentence remained at the presumptive sentence instead of reduced.” (Appellant’s App. Vol. II, p. 10). On January 26, 2023, the trial court denied Love’s motion to correct erroneous sentence without holding a hearing.

[6] Love now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[7] Love appeals following the trial court’s denial of his motion to correct erroneous sentence. Love proceeds pro se on appeal, as he did when pursuing his motion to correct erroneous sentence. It is well-settled that pro se litigants are held to the same legal standards as licensed attorneys. *Kelley v. State*, 166

N.E.3d 936, 937 (Ind. Ct. App. 2012). We will not become an advocate for a pro se litigant or develop arguments on his behalf. *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016), *trans. denied*.

[8] Pursuant to Indiana Code section 35-38-1-15, a defendant may seek to correct an erroneous sentence as follows:

If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

[9] The purpose of a motion to correct erroneous sentence is to “provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence.” *Godby v. State*, 976 N.E.2d 1235, 1236 (Ind. Ct. App. 2012). A motion to correct erroneous sentence may only be used to correct sentencing errors that are clear from the face of the sentencing judgment in light of statutory authority. *Robinson v. State*, 805 N.E.2d 783, 787 (Ind. 2004). Claims that require consideration of the proceedings before, during, or after trial may not be presented in a motion to correct erroneous sentence. *Id.* “Such claims may be raised only on direct appeal and, where appropriate, by post-conviction proceedings.” *Id.* We generally review a trial court’s denial of a motion to correct erroneous sentence for an abuse of the trial court’s discretion. *Bonds v. State*, 165 N.E.3d 1011, 1012 (Ind. Ct. App. 2021).

[10] On appeal, Love claims that the trial court abused its discretion when it denied his motion to correct erroneous sentence because the trial court failed to enter an adequate sentencing statement and because the trial court overlooked the mitigating circumstances that he had acted under strong provocation, the victim induced and/or facilitated the offense, and that Love's use of force was against a person who had repeatedly inflicted physical abuse upon him. Love also claims that his sentence is inappropriate in light of the nature of his offense and his character.

[11] However, we conclude that the trial court did not abuse its discretion in denying Love's motion to correct erroneous sentence for at least three reasons. Love received a presumptive sentence of fifty-five years for murder. Ind. Code § 35-50-2-3(a) (1995). Under the former presumptive sentencing scheme in effect when Love was sentenced, a trial court was not required to state a basis for imposing a presumptive sentence such as Love received in this case.

Hardebeck v. State, 656 N.E.2d 486, 491 (Ind. Ct. App. 1995), *trans. denied*.

Therefore, inasmuch as Love's claim pertaining to the adequacy of the trial court's sentencing statement could be characterized as implicating only the trial court's written sentencing order, the trial court's sentencing judgment was not facially erroneous for failing to adequately state its reasoning for the imposed sentence.

[12] In addition, none of Love's remaining claims were properly addressed through a motion to correct erroneous sentence, as their resolution entailed consideration of matters outside of the sentencing judgment and applicable

statutory authority, such as examination of the murder trial transcript, Love's presentence investigation report, and the transcript of Love's sentencing hearing. *See Robinson*, 805 N.E.2d at 787. Accordingly, the trial court did not abuse its discretion in summarily denying Love's motion as to those claims. *See id.*; *see also Godby*, 976 N.E.2d at 1236 (holding that a challenge to an aggravating circumstance was not properly brought through a motion to correct erroneous sentence, as it required consideration of the sentencing hearing).

[13] We also observe that, in contravention to Indiana Appellate Rule 50(A)(2), Love filed a perfunctory Appendix consisting only of the trial court's sentencing order, his motion to correct erroneous sentence filings, and the trial court's order denying his motion to correct erroneous sentence. "It is Appellant's duty to present an adequate record clearly showing the alleged error. Where he fails to do so, the issue is deemed waived." *Thompson v. State*, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002). In addition, in his notice of appeal, Love did not request that the transcripts of his trial or his sentencing hearing be compiled. Therefore, even if Love's claims pertaining to his proposed overlooked mitigating circumstances and the appropriateness of his sentence were not procedurally barred, Love has waived those claims by failing to assemble the materials necessary for us to evaluate the merits of those arguments, such as the transcripts from the lower court proceedings and his presentence investigation report.

[14] Our supreme court has observed that "[a]n appellant who proceeds pro se is held to the same established rules of procedure that a trained legal counsel is

bound to follow and, therefore, must be prepared to accept the consequences of his or her action.”” *McCullough v. CitiMortgage, Inc.*, 70 N.E.3d 820, 825 (Ind. 2017) (quoting *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003)). Because Love’s claim based on the trial court’s sentencing statement is without merit and the remainder of his claims are procedurally barred and waived, we do not disturb the trial court’s denial of his motion to correct erroneous sentence.

CONCLUSION

[15] Based on the foregoing, we hold that the trial court did not abuse its discretion when it denied Love’s motion to correct erroneous sentence.

[16] Affirmed.

[17] Bradford, J. and Weissmann, J. concur