MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Alan Kreilein,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 27, 2023

Court of Appeals Case No. 22A-CR-1579

Appeal from the Vanderburgh Superior Court

The Honorable Robert J. Pigman, Judge

Trial Court Cause No. 82D02-0405-FB-416

Bailey, Judge.

Case Summary

[1] Alan Kreilein ("Kreilein") appeals, pro se, the denial of his motion to correct his sentence for his conviction of criminal deviate conduct, as a Class A felony.[1] The dispositive issue on appeal[2] is whether the trial court abused its discretion when it denied that motion. We affirm.

Facts and Procedural History

[2] On February 14, 2004, Kreilein was charged in Cause number 82D02-0403-CM-175 ("CM-175") with domestic battery, as a Class A misdemeanor,[3] and public intoxication, as a Class B misdemeanor.[4] On May 16, 2004, Kreilein was charged in Cause number 82D02-0405-FB-416 ("FB-416") with two counts of criminal deviate conduct, as Class A felonies; one count of criminal confinement, as a Class B felony;[5] one count of stalking, as a Class C felony;[6] one count of burglary, as a Class A felony;[7] and one count of battery resulting in

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[1] I.C. § 35-42-4-2(b) (2004).

[2] In his reply brief, Kreilein also raises an assertion that the State failed to timely file its brief in this appeal. However, we already addressed that contention when we denied Kreilein's previously filed "Motion for Default Judgment" in which we noted that the State's brief was timely filed.

[3] Ind. Code § 35-42-2-1.3 (2004).

[4] I.C. § 7.1-5-1-3 (2004).

[5] I.C. § 35-42-3-3(b)(2) (2004).

[6] I.C. § 35-45-10-5(b) (2004).

[7] I.C. § 35-43-2-1(2) (2004).

serious bodily injury, as a Class C felony.[8] The State also filed a habitual offender enhancement in FB-416.

[3] On September 17, 2004, Kreilein entered into a plea agreement in FB-416 in which: (1) he pled guilty to Count I, criminal deviate conduct, as a Class A felony; (2) all remaining counts in FB-416 and the habitual offender enhancement were dismissed upon plea and sentencing; and (3) Kreilein agreed "to be sentenced on Count I to the Indiana Department of Correction ["DOC"] for a period of thirty (30) years, … executed." September 17, 2004, Plea Agreement, p. 2.[9] The trial court conducted a hearing on the plea agreement that same day. At that hearing, the State noted its agreement to dismiss the charges in CM-175.

[4] On October 11, 2004, the trial court conducted a sentencing hearing at which defense counsel stated that, in addition to the 140 days of credit for time served in FB-416, Kreilein should have eight additional days of credit for time served "on the other case that's being dismissed," i.e., CM-175, to which the court replied: "Too bad, too bad." App. at 28. The trial court accepted Kreilein's guilty plea and the parties' plea agreement, and the court "enter[ed] judgment

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[8] I.C. § 35-42-2-1(a)(3) (2004).

[9] We note that Kreilein failed to provide a copy of the plea agreement in the record of this appeal. However, the plea agreement filed in the trial court and other trial court documents missing from the record on appeal are a part of the record on appeal and available to this Court through the Odyssey case management system. *See* Ind. Appellate Rule 27.

of conviction accordingly." Docket Sheet Entry in FB-416.[10] The trial court sentenced Kreilein to thirty years in the DOC and stated that he was "entitled to credit for time served in the amount of 140 days, plus good time." *Id.* The trial court dismissed the habitual offender allegation and all counts other than Count I.

[5] On December 13 and 29, 2004, Kreilein filed "Motion[s] for Jail Time Credit" in which he asserted that the trial court had erred in ordering that he was only entitled to 140 days of credit for time served prior to sentencing, and that he was actually entitled to a total of 151 days of credit for time served before sentencing in both FB-416 and CM-175. The trial court denied those motions on January 6, 2005. On January 18, 2005, Kreilein filed a document entitled "Motion to Correct Erroneous Sentence," in which he asserted that the trial court judge knew that the amount of credit for time served was erroneous but refused to correct it due to "prejudice" against Kreilein. January 18, 2005, Motion to Correct Erroneous Sentence in FB-416.[11] The trial court denied that motion on the same day it was filed. Kreilein did not appeal either the January 6 or the January 18 decisions denying his motions.

[6] On April 14, 2022, Kreilein filed a "Motion for Jail Time Credit Not Previously Awarded with Request to Abide by Terms of Oral Plea Agreement." App. at 4.

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[10] Accessed via Odyssey.

[11] Accessed via Odyssey.

That motion raised the same claims Kreilein had raised in his December 2004 and January 2005 motions that were denied and not appealed; that is, he again asserted that the trial court erred in calculating the amount of credit due to him for time served before sentencing and again asserted misconduct on the part of the trial court judge. Kreilein attached to his Motion: Jail records regarding his days of incarceration; the Abstract of Judgment in FB-416; and transcripts of the September 17 and October 11, 2004, hearings in FB-416. On June 14, 2022, the trial court denied Kreilein's motion because "the claim was previously denied and that Order was not appealed." *Id*. at 3. This appeal ensued.

Discussion and Decision

[7] Kreilein appeals the denial of a motion to correct an erroneous sentence, brought pursuant to Indiana Code Section 35-38-1-15.[12] We review such a ruling for an abuse of discretion. *Woodcox v. State*, 30 N.E.3d 748, 750 (Ind. Ct. App. 2015). A trial court abuses its discretion if its decision is against the logic and effect of the facts and circumstances before it. *Id*. "While we defer to the trial court's factual determinations, we review legal conclusions de novo." *Id*. (citation omitted).

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[12] That statute states:

> 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.

[8] Use of the statutory motion to correct a sentence is "'narrowly confined' to claims apparent from the face of the sentencing judgment." *Hobbs v. State*, 71 N.E.3d 46, 49 (Ind. Ct. App. 2017) (quoting *Robinson v. State*, 805 N.E.2d 783, 787 (Ind. 2004)), *trans. denied*.

> As to sentencing claims not facially apparent, the motion to correct sentence is an improper remedy. [*Robinson*, 805 N.E.2d at 787.] A sentencing error that requires examination of matters beyond the face of the sentencing judgment is better suited for resolution on direct appeal or through post-conviction relief. *Woodcox* [*v. State*], 30 N.E.3d [748,] 751 [Ind. Ct. App. 2015].

Id.; *see also Murfitt v. State*, 812 N.E.2d 809, 811 (Ind. Ct. App. 2004) (holding a claim that raised "an alleged calculation error" regarding days of credit time could not be "presented by way of a motion to correct sentence" because the claim required "consideration of matters outside the face of the sentencing judgment").

[9] Here, Kreilein's claim necessarily involves matters outside the face of the judgment of conviction; in fact, in support of his claim, he attached and cited to Vanderburgh Sheriff's Office records, the Abstract of Judgment in FB-416, and transcripts of the plea agreement and sentencing hearings. Thus, addressing his claim would require "consideration of the proceedings before, during, or after trial" or sentencing. *Robinson*, 805 N.E.2d at 787. Such a claim "may not be presented by way of a motion to correct sentence." *Id*. Rather, "a sentencing error that requires examination of matters beyond the face of the sentencing judgment is better suited for resolution on direct appeal and post-conviction

relief." *Woodcox*, 30 N.E.3d at 751 (citing *Robinson*, 805 N.E.2d at 787). However, Kreilein did not file a direct appeal of the trial court's sentence, including its calculation of credit time, nor did he request permission to file a belated appeal or file a petition for post-conviction relief on that issue.

[10] The trial court did not err when it denied Kreilein's motion to correct erroneous sentence.

[11] Affirmed.

Riley, J., and Vaidik, J., concur.