

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Joshua Austin,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 13, 2024

Court of Appeals Case No.
23A-CR-1615

Appeal from the St. Joseph Superior Court
The Honorable John M. Marnocha, Judge

Trial Court Cause No.
71D02-1902-F2-2

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

- [1] Joshua Ryan Austin, pro se, appeals the trial court’s denial of his belated motion to correct error. We affirm.

Facts and Procedural History

- [2] On June 24, 2020, Austin pled guilty to level 2 felony dealing in methamphetamine. The trial court sentenced him to twenty years, with twelve years suspended to probation. The sentence was ordered to be served consecutive to a sentence in an unrelated case. On March 20, 2023, Austin filed a motion for modification of his sentence, which was denied by the trial court.
- [3] On May 11, 2023, Austin filed a motion for permission to file a belated motion to correct error pursuant to Indiana Post-Conviction Rule 2(2). Specifically, Austin requested the trial court to “break down” the reasons for its previous denial of his motion for modification of his sentence. Appealed Order at 1. The State filed its response on June 30, 2023. Before the trial court could rule on the motion, Austin filed a notice of appeal on July 7, 2023, stating that he was appealing “the trial court’s denial of his motion for permission to file a belated motion to correct error.” Appellant’s App. Vol. 2 at 26. This Court dismissed his appeal without prejudice on August 16, 2023.
- [4] Thereafter, on August 18, 2023, the trial court denied Austin’s motion to file a belated motion to correct error, determining, inter alia, that Austin was not “an

‘eligible defendant’ pursuant to Post-Conviction Rule 2.” Appealed Order at 1. This Court reinstated Austin’s appeal on September 22, 2023.

Discussion and Decision

[5] Indiana Post-Conviction Rule 2(2) provides, “An eligible defendant convicted after a trial or plea of guilty may petition the court of conviction for permission to file a belated motion to correct error addressing the conviction or sentence” under certain circumstances. The rule defines “eligible defendant” as “a defendant who, but for the defendant’s failure to do so timely, would have the right to challenge on direct appeal a conviction or sentence after a trial or plea of guilty by filing a notice of appeal, filing a motion to correct error, or pursuing an appeal.” Ind. Post-Conviction Rule 2. But this rule “is not applicable to belated motions to correct errors relating to matters at the post-conviction stage.” *Sceifers v. State*, 663 N.E.2d 1191, 1192 (Ind. Ct. App. 1996), *trans. denied, cert. denied*. Our supreme court has recognized on several occasions that Post-Conviction Rule 2 applies only to direct appeals of convictions or sentences and does not apply to appeals of collateral or post-judgment rulings. *Hill v. State*, 960 N.E.2d 141, 148-49 (Ind. 2012) (citing *Newton v. State*, 894 N.E.2d 192, 193 (Ind. 2008); *Davis v. State*, 771 N.E.2d 647, 649 (Ind. 2002)).

[6] Here, by his request to file a belated motion to correct error, Austin is ultimately attempting to challenge the trial court’s denial of his motion to modify sentence, which he failed to challenge by appeal or motion to correct error. He is not challenging his conviction or sentence. He is seeking collateral

review of the post-judgment denial of his motion for modification of his sentence.¹ Accordingly, we have little difficulty agreeing with the trial court that he is not an eligible defendant pursuant to Post-Conviction Rule 2(2). The trial court's denial of Austin's motion for permission to file a belated motion to correct error is affirmed.

[7] Affirmed.

Bailey, J., and Pyle, J., concur.

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¹ We decline to address the other two issues raised by Austin in his appellate brief, as they are not properly before this Court. His notice of appeal indicated that he was appealing from “the trial court’s denial of his motion for permission to file a belated motion to correct error.” Appellant’s App. Vol. 2 at 26. Thus, this is the only issue properly before this Court at this time. *See* Ind. Appellate Rule 9 F(3) (stating that notice of appeal shall include the “title of the judgment or order appealed.”).