

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT *PRO SE*

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IN THE COURT OF APPEALS OF INDIANA

Karl W. Morgan,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 20, 2022

Court of Appeals Case No.
21A-CR-2864

Appeal from the Adams Circuit
Court

The Honorable Chad E. Kukelhan,
Judge

Trial Court Cause No.
01C01-1511-F1-2

Bradford, Chief Judge.

Case Summary

- [1] After being charged with four counts of Level 1 felony child molesting, two counts of Level 4 felony child molesting, and one count of Level 6 felony dissemination of matter harmful to minors, Karl W. Morgan pled guilty to the two Level 4 felony counts. Pursuant to the terms of his plea agreement, the remaining charges were dismissed, and the trial court imposed an aggregate twenty-year sentence. Morgan subsequently filed a motion to correct erroneous sentence. This appeal follows the denial of Morgan's motion. We affirm.

Facts and Procedural History

- [2] Between May 9, 2014 and November 19, 2015, Morgan engaged in numerous sex acts with S.M., who was between the ages of eleven and twelve at the time. On November 21, 2015, the State charged Morgan with four counts of Level 1 felony child molesting, two counts of Level 4 felony child molesting, and one count of Level 6 felony dissemination of matter harmful to minors.
- [3] Morgan subsequently entered into a plea agreement whereby he agreed to plead guilty to the two counts of Level 4 felony child molesting. In exchange for his guilty plea, the State agreed to dismiss the remaining charges. The parties further agreed that Morgan would be sentenced to two consecutive ten-year sentences, for an aggregate sentence of twenty years. On May 17, 2017, the trial court accepted Morgan's plea agreement and, in accordance with its terms, sentenced him to an aggregate twenty-year term with fourteen years executed

and six years suspended. In sentencing Morgan, the trial court found that Morgan “is a sexually violent predator[.]” Appellant’s App. Vol. II p. 121.

[4] Morgan filed a motion to correct erroneous sentence on November 16, 2021. In this motion, Morgan argued that he “is serving one sentence and should be serving a totally different sentence according to Indiana state law.” Appellant’s App. Vol. II p. 20. Specifically, Morgan argued that “the charges that [he] pled [guilty] to does [sic] not make him a ‘sexually violent predator.’” Appellant’s App. Vol. II p. 26. The trial court denied Morgan’s motion on November 18, 2021.

Discussion and Decision

[5] Morgan contends that the trial court abused its discretion in denying his motion to correct erroneous sentence. A motion to correct erroneous sentence “may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority.” *Godby v. State*, 976 N.E.2d 1235, 1236 (Ind. Ct. App. 2012) (internal quotation omitted). “In other words, use of this statutory motion should be reserved for the correction of obvious sentencing errors.” *Id.* (internal quotation omitted). “Claims that require consideration of matters outside the face of the sentencing judgment may not be addressed via this type of motion.” *Id.* “We review a trial court’s decision on a motion to correct erroneous sentence only for an abuse of discretion.” *Davis v. State*, 978 N.E.2d 470, 472 (Ind. Ct. App. 2012).

“An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it.” *Id.*

[6] Again, Morgan pled guilty to two counts of Level 4 felony child molesting under Indiana Code section 35-42-4-3(b). Indiana Code section 35-38-1-7.5(b)(1)(C) provides that a person who: “being at least eighteen (18) years of age, commits an offense described in ... [Indiana Code section] 35-42-4-3 as a ... Level 1, Level 2, Level 3, or Level 4 felony ... is a sexually violent predator.” Ind. Code § 35-38-1-7.5(b)(1)(C). Morgan asserts that the trial court erred in finding him to be a sexually violent predator because Indiana Code section 35-38-1-7.5(b)(1)(C) does not explicitly include subsection (b) of Indiana Code section 35-42-4-3 in the list of qualifying offenses.

[7] While the list of statutory qualifying offenses set forth in Indiana Code section 35-38-1-7.5(b)(1)(C) does not explicitly list subsection (b) of Indiana Code 35-42-4-3, it does explicitly state that one qualifies as a sexually violent predator if convicted of a Level 1, Level 2, Level 3, or Level 4 felony offense under Indiana Code section 35-42-4-3. Morgan was convicted under subsection (b) of Indiana Code section 35-42-4-3 of two counts of Level 4 felony child molesting. Morgan’s convictions were therefore proper qualifying offenses. Accordingly, the trial court neither erred in finding Morgan to be a sexually violent predator nor abused its discretion in denying his motion to correct erroneous sentence.

[8] The judgment of the trial court is affirmed.

Robb, J., and Pyle, J., concur.