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IN THE  
COURT OF APPEALS OF INDIANA

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Ryan L. Fisel,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

October 28, 2022

Court of Appeals Case No.  
22A-CR-1279

Appeal from the Wells Superior  
Court

The Honorable Andrew K.  
Antrim, Judge

Trial Court Cause No.  
90D01-2109-F6-122

**Tavitas, Judge.**

### Case Summary

- [1] Ryan Loy Fisel appeals the trial court’s correction of Fisel’s sentence from a direct placement on home detention to a commitment in the Department of Correction (“DOC”). Fisel argues his original sentence was authorized under

Indiana Code Section 35-38-2-6.3 and that the trial court lacked “jurisdiction” to modify it.<sup>1</sup> Appellant’s Br. p. 13. We disagree. Accordingly, we affirm.

## Issues

- [2] Fisel raises two issues on appeal, which we restate as:
- I. Whether Fisel’s original sentence of a direct placement on home detention was statutorily authorized.
  - II. Whether the trial court had jurisdiction to correct Fisel’s sentence.

## Facts

- [3] On September 3, 2021, the State charged Fisel with Count I, operating a vehicle as an habitual traffic violator, a Level 6 felony, and alleged that Fisel is an habitual offender. Fisel pleaded guilty to Count I and admitted to being an habitual offender on January 3, 2022.
- [4] At the sentencing hearing held on March 16, 2022, the trial court entered a judgment of conviction on Count I and found Fisel to be an habitual offender.

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<sup>1</sup> We note at the outset that whether the trial court had the authority to correct Fisel’s sentence is not a matter of jurisdiction, but rather one of procedure. *See K.S. v. State*, 849 N.E.2d 538, 541-42 (Ind. 2006) (distinguishing lack of jurisdiction from procedural error). “To render a valid judgment, a court must possess two forms of jurisdiction: jurisdiction over the subject matter and jurisdiction over the parties,” *Mishler v. Cnty. of Elkhart*, 544 N.E.2d 149, 151 (Ind. 1989) (citation omitted), and there is no question that the trial court possessed both here. That the trial court had jurisdiction, thus, is not in dispute. Still, as the parties categorize the issue of the trial court’s authority to correct Fisel’s sentence as jurisdictional, we will use that terminology.

The trial court sentenced Fisel to 912 days in the DOC, enhanced by 730 days for the habitual offender enhancement, for a total of 1,642 days in the DOC, with all suspended except for 732 days executed as a direct placement on home detention.

- [5] On April 7, 2022, the State filed a motion to correct error, in which it alleged that the trial court’s sentencing order was “contrary to law in that direct commitment to home detention is not provided for by statute for [Fisel’s] offense or enhancement.”<sup>2</sup> Appellant’s App. Vol. II p. 64. The trial court granted the State’s motion to correct error on May 9, 2022, and, accordingly, ordered that the 732 days Fisel was to serve as a direct placement on home detention instead be served in the DOC. Fisel now appeals.

## **Discussion and Decision**

### ***I. Illegal Sentence***

- [6] Fisel argues his original sentence of home detention was authorized under Indiana Code Section 35-38-2-6.3 because a sentence pursuant to a habitual offender enhancement is eligible for direct placement on home detention. We disagree.
- [7] “A sentence that is contrary to, or violative of, a penalty mandated by statute is illegal in the sense that it is without statutory authorization.” *Ben-Yisrayl v.*

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<sup>2</sup> The State also filed a motion to revoke home detention on April 13, 2022, after Fisel failed a drug screen. The trial court consequently ordered thirty days of Fisel’s suspended sentence to be executed.

*State*, 908 N.E.2d 1223, 1228 (Ind. Ct. App. 2009) (citing *Rhodes v. State*, 698 N.E.2d 304, 307 (Ind.1998)), *trans. denied*. “[C]ourts are limited to imposing sentences that are *authorized* by statute, rather than only being limited to sentences that are not *prohibited* by statute.” *Wilson v. State*, 5 N.E.3d 759, 762 (Ind. 2014) (quoting *Wilson v. State*, 988 N.E.2d 1221, 1224 (Ind. Ct. App. 2013)) (emphasis and brackets in original). We review such questions of law *de novo*. *Temme v. State*, 169 N.E.3d 857, 859 (Ind. 2021).

[8] Indiana Code Section 35-38-2.6-3 governs direct placements in community corrections programs, which include direct placements on home detention. Indiana Code Section 35-38-2.6-3(a) provides, “[t]he court may, at the time of sentencing, suspend any portion of the sentence and order a person to be placed in a community corrections program as an alternative to commitment to the [DOC] for the part of the sentence which must be executed **under IC 35-50-2-2.1 or IC 35-50-2-2.2.**”<sup>3</sup> (emphasis added). In other words, Indiana Code

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<sup>3</sup> Indiana Code Section 35-50-2-2.1(a) provides, in relevant part, “the court may not suspend a sentence for a felony for a person with a juvenile record” when the juvenile record meets the requirements of subsection (a)(1), unless the requirements of subsection (b) are met.

Indiana Code Section 35-50-2-2.2(a) provides, in relevant part, “the court may suspend any part of a sentence for a felony” except:

- (b) If a person is convicted of a Level 2 felony or a Level 3 felony and has any prior unrelated felony conviction, other than a conviction for a felony involving marijuana, hashish, hash oil, or salvia divinorum, the court may suspend only that part of a sentence that is in excess of the minimum sentence for the:
  - (1) Level 2 felony; or
  - (2) Level 3 felony.

Section 35-38-2.6-3(a) only authorizes placement on home detention as an alternative to commitment to the DOC when the sentence is non-suspendable pursuant to Indiana Code Section 35-50-2-2.1 or 35-50-2-2.2. *See Russel v. State*, 189 N.E.3d 1160, 1163 (Ind. Ct. App. 2022). Neither Indiana Code Section 35-50-2-2.1 nor 35-50-2-2.2 applies to Fisel’s sentence.

[9] Indiana Code Section 35-50-2-8(i) governs the sentencing of habitual offenders and provides, in relevant part, “[a]n additional term imposed under this subsection is nonsuspendable.” *See Reffett v. State*, 844 N.E.2d 1072, 1074 (Ind. Ct. App. 2006). Fisel’s enhanced sentence as a habitual offender, thus, is non-suspendable pursuant to Indiana Code Section 35-50-2-8(i), not Section 35-50-2-2.1 or 35-50-2-2.2. A direct placement on home detention, accordingly, was not statutorily authorized for Fisel’s sentence.

[10] Fisel also appears to argue that his “original sentence was not statutorily prohibited.” Appellant’s Br. p. 12. We disagree. “[C]ourts are limited to imposing sentences that are *authorized* by statute, rather than only being limited to sentences that are not *prohibited* by statute.” *Wilson*, 5 N.E.3d at 762 (internal quotation omitted). The trial court, accordingly, did not err in finding that Fisel’s original sentence was unauthorized.

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(c) The court may suspend only that part of a sentence for murder or a Level 1 felony conviction that is in excess of the minimum sentence for murder or the Level 1 felony conviction.

## *II. Jurisdiction to Modify Sentence*

- [11] We next turn to whether the trial court had the authority to modify Fisel’s unauthorized sentence. We find that it did.
- [12] “Our supreme court has said that ‘[t]he power of a court of record to correct erroneous sentences and to impose proper ones has long been recognized.’” *Niece v. State*, 456 N.E.2d 1081, 1084 (Ind. Ct. App. 1983) (quoting *Williams v. State*, 233 Ind. 327, 332, 119 N.E.2d 547, 549 (Ind. 1954)). “Trial courts have the power and duty to correct an erroneously imposed sentence.” *Lane v. State*, 727 N.E.2d 454, 456 (Ind. Ct. App. 2000) (citing *Lockhart v. State*, 671 N.E.2d 893, 904 (Ind. Ct. App. 1996), *trans. denied*). A trial court may modify an illegal sentence “even if the illegal sentence has been partially executed.” *Niece*, 456 N.E.2d at 1084 (citing *Bozza v. United States*, 330 U.S. 160, 67 S. Ct. 645 (1947)) (additional citations omitted).
- [13] A motion to correct error is a proper device to raise errors in a sentence and to permit the trial court to correct that sentence.<sup>4</sup> Indiana Criminal Procedure Rule 16 provides, “Trial Rule 59 (Motion to Correct Error) . . . will apply to criminal proceedings insofar as applicable[.]” And Indiana Trial Rule 59(J)(3) permits a trial court to “[a]lter, amend, modify or correct judgment” upon finding that “prejudicial or harmful error has been committed[.]” Our courts

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<sup>4</sup> A motion to correct error must be filed “not later than thirty (30) days after the entry of final judgment.” Ind. Tr. R. 59(C).

have sanctioned the use of the motion to correct error to correct unauthorized sentences, stating:

When an error related to sentencing occurs, it is in the best interests of all concerned that it be immediately discovered and corrected. Other than an immediate motion to correct sentence, such errors are best presented to the trial court by the optional motion to correct error under Indiana Trial Rule 59, or upon a direct appeal from the final judgment . . . .

*Hobbs v. State*, 71 N.E.3d 46, 49 (Ind. Ct. App. 2017) (quoting *Robinson v. State*, 805 N.E.2d 783, 786 (Ind. 2004), *trans. denied*; see also *Niece*, 456 N.E.2d at 1085-87 (approving of State’s use of motion to correct error to raise error in sentencing).

[14] Fisel relies on *Lane* for the proposition that the trial court lacked jurisdiction to modify his sentence. 727 N.E.2d 454. In *Lane*, the trial court originally sentenced the defendant to “what the court believed to be the presumptive sentence for the crime of murder of fifty years.” *Id.* at 455. On appeal, we found “[t]he relevant presumptive sentence was in fact forty years” and remanded. *Id.* at 455-56. On remand, the trial court resentenced the defendant “to an enhanced sentence of fifty years’ imprisonment.” *Id.* at 456. The defendant appealed his enhanced sentence, and we reversed, noting, “the power to correct extends only to the illegal portion of the sentence.” *Id.* (citing *State ex. Rel. Pub. Serv. Comm’n v. Johnson Circuit Ct.*, 232 Ind. 501, 509, 112 N.E.2d 429, 432 n.3 (1953)). *Lane* held, “[b]y the time of re-sentencing, the court was

without authority to reweigh aggravating and mitigating factors” in resentencing the defendant. *Id.* at 457.

- [15] We find *Lane* distinguishable. Here, the trial court did not reweigh the aggravating and mitigating factors and resentence Fisel to an enhanced sentence. Rather, the trial court modified only the portion of the original sentence it found unauthorized—the direct placement on home detention.
- [16] Fisel also relies on *Dier v. State*, 524 N.E.2d 789 (Ind. 1988), which we also find distinguishable. In *Dier*, our Supreme Court held the trial court lacked the authority to resentence the defendant, noting that the defendant “was *legally* sentenced” originally. *Id.* at 790 (emphasis added). That is not the case here, where the trial court found it was without authority to impose Fisel’s original sentence.
- [17] Fisel also argues the trial court lacked jurisdiction to resentence him to a harsher sentence. Obviously, an unauthorized sentence cannot stand merely because it is more lenient than what the law allows. Accordingly, we find that the trial court had the authority to correct Fisel’s sentence.<sup>5</sup>

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<sup>5</sup> Fisel also appears to argue that the trial court abused its discretion in granting the State’s motion to correct error. “In general, we review a ruling on a motion to correct error for abuse of discretion,” however, where “the ruling turns on a question of law, we review the trial court’s legal conclusions *de novo*.” *In re S.H.*, 984 N.E.2d 630, 633 (Ind. 2013) (citation omitted). Fisel’s original sentence of a direct placement on home detention was statutorily unauthorized, and the trial court corrected that error by resentencing Fisel to a commitment in the DOC. The trial court did not modify Fisel’s sentence beyond correcting this improper placement. *Cf. Lane*, 727 N.E.2d at 456-57. Accordingly, the trial court did not err.



## Conclusion

[18] Fisel's original sentence of a direct placement on home detention was not authorized by the relevant statutes, and the trial court had jurisdiction to correct the error. The trial court properly did so. Accordingly, we affirm.

[19] Affirmed.

Brown, J., and Altice, J., concur.