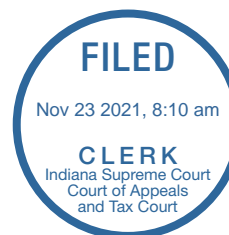


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

Timothy N. Hatton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 23, 2021

Court of Appeals Case No.
21A-CR-1095

Appeal from the Marshall Superior
Court

The Honorable Robert O. Bowen,
Judge

Trial Court Cause No.
50D01-1107-FA-24

Tavitas, Judge.

Case Summary

- [1] Timothy Hatton appeals the trial court's denial of his motion to correct the abstract of judgment. Hatton argues that he was improperly classified as a credit restricted felon. We conclude, however, that Hatton is required to present this claim by way of a successive petition for post-conviction relief. Accordingly, the trial court properly denied Hatton's motion to correct the abstract of judgment. We affirm.

Issue

- [2] Hatton raises one issue, which we restate as whether the trial court properly denied Hatton's motion to correct the abstract of judgment.

Facts

- [3] In October 2012, Hatton pleaded guilty to child molesting, a Class B felony. The trial court sentenced Hatton to twenty years in the Department of Correction with five years suspended to probation. The abstract of judgment reflects that Hatton is a credit restricted felon.
- [4] In December 2014, Hatton filed a petition for post-conviction relief and claimed that his attorney was ineffective and that his guilty plea was invalid. The post-conviction court later denied the petition. Hatton appealed the denial of his petition for post-conviction relief, and this Court affirmed. *See Hatton v. State*, No. 18A-PC-749 (Ind. Ct. App. Jan. 17, 2019), *trans. denied*.

[5] In December 2018, Hatton filed a motion to correct his designation as a credit restricted felon, which the trial court denied. Hatton filed a motion to reconsider, which the trial court denied. The trial court's order provided: "The defendant is properly classified as a 'credit restricted felon' as defined by IC 35-31.5-2-72. The defendant was convicted of child molesting under IC 35-42-4-3(a)(1) with the allegation of deviate sexual conduct." Appellant's App. Vol. I p. 66.

[6] Hatton filed an appeal of the denial of his motion, and this Court dismissed the appeal. *See Hatton v. State*, No. 19A-CR-191 (Ind. Ct. App. Aug. 8, 2019). This Court noted that Hatton's claim required the consideration of matters outside the face of the judgment and, thus, must be presented by way of a successive petition for post-conviction relief. Because Hatton failed to request permission to file a successive petition for post-conviction relief, this Court dismissed the appeal.

[7] In May 2021, Hatton filed a motion to correct the abstract of judgment. Hatton again argued that he was improperly classified as a credit restricted felon on the abstract of judgment. The trial court denied Hatton's motion, and Hatton now appeals.

Analysis

[8] Hatton challenges the trial court's denial of his motion to correct the abstract of judgment. Hatton's motion was in effect a motion to correct erroneous sentence. We review a ruling on a motion to correct erroneous sentence only

for an abuse of discretion. *Hobbs v. State*, 71 N.E.3d 46, 48 (Ind. Ct. App. 2017), *trans. denied*. An abuse of discretion occurs if the trial court’s decision is against the logic and effect of the facts and circumstances before it. *Id.*

[9] A defendant may file a motion to correct erroneous sentence under Indiana Code Section 35-38-1-15, which provides:

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.

[10] Our Supreme Court, however, has held 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.” *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 by way of a motion to correct sentence.” *Id.* Instead, such claims must be presented by way of direct appeal or a petition for post-conviction relief. *Id.* As Hatton was informed in his prior appeal, Hatton’s claim that he should not be a credit restricted felon is an argument that requires the

consideration of matters beyond the face of the abstract of judgment.¹

Accordingly, Hatton's claim cannot be presented in a motion to correct the abstract of judgment.

[11] As we noted in Hatton's prior appeal, Hatton previously filed a petition for post-conviction relief. Successive petitions for post-conviction relief are governed by Indiana Post-Conviction Rule 1(12), which outlines a specific procedure that the petitioner must follow, including filing a proposed successive petition for post-conviction relief with this Court. Hatton has failed to follow the procedures to file a successive petition for post-conviction relief. Accordingly, the trial court properly denied Hatton's motion to correct the abstract of judgment.

Conclusion

[12] The trial court properly denied Hatton's motion to correct the abstract of judgment. Accordingly, we affirm.

Affirmed.

Mathias, J., concurs.

Weissmann, J., dissents with a separate opinion.

¹ Hatton argues that the trial court's sentencing order and pronouncement of sentence at the sentencing hearing did not mention that he would be a credit restricted felon and, thus, conflicts with the abstract of judgment.

IN THE
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Timothy N. Hatton,
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State of Indiana,
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Court of Appeals Case No.
21A-CR-1095

Weissmann, Judge, dissenting.

- [1] I respectfully dissent from the majority’s decision to leave Hatton’s claim to the post-conviction relief process. The majority views Hatton’s argument as requiring consideration of matters beyond the face of the judgment. I do not. This case does not require the litigants and the court to engage in another legal process, which will unnecessarily expend judicial resources and taxpayer dollars and potentially demand review from our resource-strapped Public Defender of

Indiana.¹ The Record is clear that Hatton is a credit restricted felon, and I would lay to rest his contrary claim.

[2] The essence of Hatton’s claim is a conflict between the abstract of judgment—which reflects that he is a credit restricted felon—and the oral and written sentencing orders—which are silent on that issue. This discrepancy is a sentencing error clear on the face of the judgment, according to Hatton. He asks this Court to accept the silence in the oral and written sentencing orders as an affirmative ruling that he is not a credit restricted felon. He requests this Court view the credit restricted felon designation in the abstract of judgment as error and to remove it.

[3] Both at the time of Hatton’s offense and at his sentencing, a “credit restricted felon” included a person convicted of child molesting involving deviate sexual conduct committed when the child was less than 12 years old and the perpetrator was at least 21 years old. Ind. Code 35-41-1-5.5(1) (recodified effective July 1, 2012, as Ind. Code 35-31.5-2-72(1)). The record shows Hatton was convicted of a Class B felony for engaging in sexual deviate conduct with a child less than 14 years old. App. Vol. II, pp. 34-35, 37, 56. The charging

¹ The Public Defender of Indiana generally is obligated to represent inmates with non-frivolous claims for post-conviction relief who are “financially unable to employ counsel.” Ind. Code § 33-40-1-2(a), (c). The Public Defender also must represent indigent inmates with non-frivolous claims in proceedings before the Indiana Department of Correction or Parole Board “if the right to legal representation is established by law.” Ind. Code § 33-40-1-2(b).

information, which was read to Hatton during the guilty plea hearing, alleged that the child was 9 years old at the time of the offense. *Id.* at 34. The trial court specifically found in its oral sentencing statement that the child was under 12 years old at the time of the offense. *Id.* at 56. Hatton did not dispute the child's age. *Id.* at 34, 56.

- [4] Hatton was 31 years old at his sentencing hearing, which occurred about 1½ years after the offense to which he pleaded guilty. *Id.* at 33-34. Therefore, it is clear on the record before us that Hatton met all of the requirements of a “credit restricted felon.” See *White v. State*, 961 N.E.2d 54, 56-57 (Ind. 2012), *trans. denied* (finding the credit restricted felon statute applied to both Class A and Class B felony child molesting where statutory requirements were met).
- [5] Hatton tries to flout the trial court's mistake in failing to specifically advise him of his status. See Ind. Code § 35-38-1-7.8 (“At the time of sentencing, a court shall determine whether a person is a credit restricted felon . . . and advise the defendant of the consequences of this determination.”). Hatton is correct that the trial court, when sentencing him, failed to determine on the record that Hatton was a credit restricted felon. But it clearly deemed him a credit restricted felon in light of its entry on the abstract of judgment.
- [6] So Hatton is correct that error on the face of the judgment does exist—that is, the absence of any credit restricted felon determination in the sentencing judgments in violation of Indiana Code § 35-38-1-7.8. But I do not believe the correction of this error requires the post-conviction relief process. I would

reverse the trial court's denial of Hatton's motion to correct erroneous sentence and remand this case with instructions for the trial court to comply with Indiana Code § 35-38-1-7.8 by determining that Hatton is a credit restricted felon and advising him of the consequences of that determination. *See Snyder v. State*, case number 21A-CR-854, *4 (Ind. Ct. App. Sept. 30, 2021) ("When an indisputable error with a post-guilty plea conviction is obvious on the face of the record, justice is best served by correcting the mistake on direct appeal rather than allowing the error to fester through the uncertainty of the postconviction process.")