MEMORANDUM DECISION

APPELLANT, PRO SE

Roland O. Ward
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ATTORNEYS FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Roland O. Ward,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

November 16, 2023

Court of Appeals Case No. 23A-CR-1143

Appeal from the Monroe Circuit Court

The Honorable Marc R. Kellams, Judge
The Honorable Valeri Haughton, Judge

Trial Court Cause No. 53C02-1001-FA-59

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

[1] Roland O. Ward ("Ward"), pro se, appeals the trial court's order denying his motion to correct erroneous sentence. Within Ward's motion, he challenged whether two of his Class D felony convictions fell within the statute of limitations. Because a motion to correct erroneous sentence is limited to correcting sentencing errors apparent on the face of the judgment and Ward raises an issue outside of this context, we conclude that the trial court did not abuse its discretion by denying his motion to correct erroneous sentence.

[2] We affirm.

Issue

> Whether the trial court abused its discretion by denying Ward's motion to correct erroneous sentence.

Facts

[3] In October 2011, a jury found Ward guilty of Class A felony child molesting, five counts of Class B felony sexual misconduct of a minor, Class C felony escape, Class D felony child seduction, Class D felony dissemination of matter harmful to minors, and Class D felony neglect of a dependent. The trial court imposed an aggregate fifty-eight (58) year sentence for Ward's ten convictions.

[4] Ward initiated a direct appeal but then suspended the appeal, pursuant to the *Davis-Hatton* procedure, to file a petition for post-conviction relief.[1] After the post-conviction court had denied Ward's post-conviction petition, Ward reinstated his appeal and raised direct appeal and post-conviction issues. Our Court affirmed the trial court's and the post-conviction court's judgments. *See Ward v. State*, No. 53A01-1408-PC-330 (Ind. Ct. App. March 11, 2015) (mem.), *trans. denied*.

[5] Eight years later, in March 2023, Ward filed a pro se motion to correct erroneous sentence pursuant to INDIANA CODE § 35-38-1-15 and a memorandum in support of the motion. In Ward's motion, Ward challenged whether his convictions for Class D felony dissemination of matter harmful to minors and Class D felony neglect of a dependent fell within the statute of limitations. The State filed a response and argued that Ward's motion to correct erroneous sentence was not proper because he was collaterally attacking two of his underlying convictions. The trial court denied Ward's motion to correct erroneous sentence.

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[1] As our Court has explained:

> The *Davis-Hatton* procedure results in the termination or suspension of an already initiated direct appeal to allow the appellant to pursue a petition for post-conviction relief. Where, as here, the petition for post-conviction relief is denied, the direct appeal may be reinstated. This procedure permits an appellant to simultaneously raise his direct-appeal issues as well as issues on appeal from the denial of his petition for post-conviction relief. In other words, the direct appeal and the appeal of the denial of post-conviction relief are consolidated.

Hinkle v. State, 97 N.E.3d 654, 658 n.1(Ind. Ct. App. 2018) (internal citations and quotation marks omitted), *trans. denied*.

[6] Ward now appeals.

Decision

[7] At the outset, we note that Ward has chosen to proceed pro se. It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Thus, pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. *Id.* "We will not become a party's advocate, nor will we address arguments that are inappropriate, improperly expressed, or too poorly developed to be understood." *Barrett v. State*, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005), *trans. denied*.

[8] Ward appeals the trial court's denial of his motion to correct erroneous sentence pursuant to INDIANA CODE § 35-38-1-15. We review a trial court's denial of a motion to correct erroneous sentence for an abuse of discretion, which occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. *Davis v. State*, 978 N.E.2d 470, 472 (Ind. Ct. App. 2012).

[9] An inmate who believes he has been erroneously sentenced may file a motion to correct the sentence pursuant to INDIANA CODE § 35-38-1-15. *Neff v. State*, 888 N.E.2d 1249, 1250-51 (Ind. 2008). INDIANA CODE § 35-38-1-15 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.

"The purpose of the statute 'is to provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence.'" *Robinson v. State*, 805 N.E.2d 783, 785 (Ind. 2004) (quoting *Gaddie v. State*, 566 N.E.2d 535, 537 (Ind. 1991)).

[10] A statutory 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,* 805 N.E.2d at 787. "Such claims may be resolved by considering only the face of the judgment and the applicable statutory authority without reference to other matters in or extrinsic to the record." *Fulkrod v. State*, 855 N.E.2d 1064, 1066 (Ind. Ct. App. 2006). If a claim requires consideration of the proceedings before, during, or after trial, it may not be presented by way of a motion to correct erroneous sentence. *Robinson*, 805 N.E.2d at 787. Such claims are best addressed on direct appeal or by way of a petition for post-conviction relief where applicable. *Id.* "Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the sentencing judgment, and the "facially erroneous" prerequisite should henceforth be strictly applied[.]" *Id.*

[11] Here, Ward's motion to correct erroneous sentence challenges whether his convictions for Class D felony dissemination of matter harmful to minors and

Class D felony neglect of a dependent fell within the statute of limitations. The error that Ward alleges is not clear from the face of the sentencing order and is not appropriate for a motion to correct erroneous sentence. *See Robinson*, 805 N.E.2d at 787. Because Ward has failed to show that the trial court abused its discretion by denying his motion, we affirm the trial court's judgment. *See, e.g.*, *Bauer v. State*, 875 N.E.2d 744, 746 (Ind. Ct. App. 2007) (affirming the trial court's denial of the defendant's motion to correct erroneous sentence where the defendant's claims required consideration of matters in the record outside the face of the judgment and were, accordingly, not the types of claims properly presented in a motion to correct erroneous sentence), *trans. denied.* [2]

[12] Affirmed.

Tavitas, J., and Foley, J., concur.

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[2] The State also raised a cross-appeal issue, arguing that Ward's appeal should be dismissed because his notice of appeal, which has a file-stamped date of May 12, 2023, was untimely filed. Specifically, the State contends that Ward filed his notice of appeal seven days late. In response, Ward contends that his notice of appeal, which the certificate of service shows that he had submitted it to prison officials for mailing on May 4, 2023, was timely filed pursuant to the prisoner mailbox rule. "The prison mailbox rule provides that 'a pro se incarcerated litigant who delivers a [document] to prison officials for mailing on or before its due date accomplishes a timely filing'; and the document is deemed 'filed' on the date of submission to prison officials." *Harkins v. Westmeyer*, 116 N.E.3d 461, 469 (Ind. Ct. App. 2018) (quoting *Dowell v. State*, 922 N.E.2d 605, 607 (Ind. 2010)). *See also Morales v. State*, 19 N.E.3d 292, 296 (Ind. Ct. App. 2014) (explaining that "[p]ursuant to th[e] [prisoner mailbox] rule, the date a pro-se prisoner delivers notice to prison authorities for mailing should be considered the date of filing as opposed to the date of receipt"), *trans. denied*. Based on the prisoner mailbox rule, we conclude that Ward's notice of appeal was timely filed.