

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or the law of the case.



APPELLANT, PRO SE

Scott Miller
Westville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Scott Miller,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

January 18, 2024

Court of Appeals Case No.
23A-CR-2205

Appeal from the LaGrange
Superior Court

The Honorable Lisa M. Bowen-
Slaven, Judge

Trial Court Cause No.
44D01-0407-FA-9

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

[1] Scott E. Miller (“Miller”), pro se, returns to this Court with another appellate challenge to his sentence. In this current appeal, he appeals the trial court’s order denying his motion to correct erroneous sentence. Within Miller’s motion, he challenged the authenticity of the presentence investigation report, the propriety of his aggravating circumstances, and the effectiveness of his trial counsel. Because a motion to correct erroneous sentence is limited to correcting sentencing errors apparent on the face of the judgment and Miller 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 Miller’s motion to correct erroneous sentence.

Facts

[3] In 2005, a jury convicted Miller of Class A felony dealing in methamphetamine and Class B felony dealing in a Schedule II controlled substance. The trial court sentenced Miller to concurrent terms of fifty (50) years for the Class A felony conviction and twenty (20) years for the Class B felony conviction. On direct appeal, this Court affirmed Miller’s convictions. *See Miller v. State*, 44A03-0506-CR-259 (mem.) (Ind. Ct. App. March 16, 2006), *trans. denied*. In 2013, our Court also affirmed the post-conviction court’s denial of Miller’s

petition for post-conviction relief. *See Miller v. State*, 44A05-1207-PC-376 (mem.) (Ind. Ct. App. Apr. 18, 2013).

[4] Miller then filed various motions relating to his sentence. Specifically, between 2014 and 2022, Miller filed four petitions to modify his sentence. The trial court denied Miller’s first motion, granted Miller’s second motion in part to recommend purposeful incarceration, and denied his third and fourth motions. Miller appealed the denial of his fourth motion to modify his sentence, and we affirmed the trial court’s judgment. *See Miller v. State*, 22A-CR-513 (mem.) (Ind. Ct. App. May 19, 2023).

[5] Additionally, Miller filed a motion to correct erroneous sentence in 2019. The trial court dismissed Miller’s motion, and our Court affirmed the trial court’s judgment in 2020. *See Miller v. State*, 19A-CR-2870 (mem.) (Ind. Ct. App. Dec. 23, 2020). Our Court also denied Miller’s two petitions seeking permission to file successive post-conviction petitions. *See Miller v. State*, 21A-SP-652 (order) (Ind. Ct. App. Apr. 30, 2021); *Miller v. State*, 21A-SP-1801(order) (Ind. Ct. App. Jan. 6, 2022).

[6] In August 2023, Miller filed the motion that is the subject of this current appeal. Specifically, Miller 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 Miller’s motion, he argued that “the judgement [sic] was insufficient” and that the trial court had used a “materially untrue and uncertified pre-sentence report to aggravate [his] sentence.” (App. Vol. 2 at 19). In his memorandum,

Miller directed the trial court to portions of the sentencing transcript and the presentence investigation report in support of his motion. He also challenged the adequacy and authenticity of the presentence investigation report, the propriety of his aggravating circumstances, and the effectiveness of his trial counsel. The trial court denied Miller's motion to correct erroneous sentence.

[7] Miller now appeals.

Decision

[8] At the outset, we note that Miller 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*.

[9] Miller 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).

[10] 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)).

[11] 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.*

[12] Here, Miller’s motion to correct erroneous sentence directed the trial court to portions of the sentencing transcript and the presentence investigation report in support of his motion. He also challenged the adequacy and authenticity of the presentence investigation report, the propriety of his aggravating circumstances, and the effectiveness of his trial counsel. The error that Miller 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 Miller 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*.¹

¹ The State contends that Miller’s appeal of his motion to correct erroneous sentence pursuant to INDIANA CODE § 35-38-1-15 is barred by *res judicata*. The State asserts that this Court has “considered and determined” Miller’s previous challenges to his sentence on appeal. (State’s Br. 8). We note, however, that Miller did not challenge his sentence on direct appeal or in his post-conviction proceeding. He filed four petitions to modify his sentence pursuant to INDIANA CODE § 35-38-1-17. He appealed the denial of his fourth petition, and this Court affirmed the trial court’s denial of Miller’s petition on a procedural issue. *See Miller v. State*, 22A-CR-513 (mem.) (Ind. Ct. App. May 19, 2023). He also filed one previous motion to correct erroneous sentence pursuant to INDIANA CODE § 35-38-1-15, which the trial court dismissed. Our

[13] Affirmed.

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

Court affirmed the trial court's judgment. *See Miller v. State*, 19A-CR-2870 (mem.) (Ind. Ct. App. Dec. 23, 2020).

The State refers to *res judicata* by referring to cases that discuss the standard that applies in a post-conviction appeal. (State's Br. 8) ("An issue that was raised and decided on direct appeal is *res judicata* and may not be litigated again on post-conviction review."). Miller did not challenge his sentence in his direct appeal. Additionally, our supreme court in *Robinson* explained that a motion to correct erroneous sentence is not a post-conviction proceeding. *See Robinson v. State*, 805 N.E.2d 783, 788 (Ind. 2004) ("Because such motions to correct sentence based on clear facial error are not in the nature of post-conviction petitions, we conclude that they may also be filed after a post-conviction proceeding without seeking the prior authorization necessary for successive petitions for post-conviction relief under Indiana Post-Conviction Rule 1(12).").