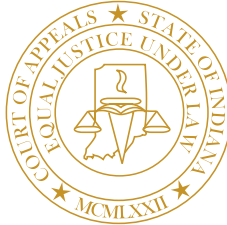


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Victor James,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 11, 2025

Court of Appeals Case No.
23A-CR-2580

Appeal from the Porter Superior Court
The Honorable Jeffrey W. Clymer, Judge
Trial Court Cause No.
64D02-9002-CF-30

Memorandum Decision by Judge Foley
Judges Bailey and Bradford concur.

Foley, Judge.

- [1] On appeal, Vincent T. James, a/k/a Victor James (“James”), pro se, claims the trial court abused its discretion in denying his motion to correct erroneous sentence. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] In 1990 James was convicted of felony murder and sentenced on February 28, 1991, to death. James appealed his conviction, and our Supreme Court reversed his death sentence on April 29, 1993. *See James v. State* (“*James I*”), 613 N.E.2d 15, 30 (Ind. 1993). On remand, the trial court resentenced James to an aggregate sentence of ninety years executed. His sentence consisted of a “presumptive forty (40) years, enhanced by thirty (30) years by reason of a finding that he was a habitual offender. The sentence was further enhanced by twenty (20) years by reason of: ‘1) commission of the murder was in perpetration of an armed robbery, 2) criminal history of said defendant.’” *James v. State* (“*James II*”), 643 N.E.2d 321, 322 (Ind. 1994). James then appealed his new sentence to our Supreme Court, which affirmed the trial court on November 29, 1994. *See id.* On November 30, 2015, James filed a pro se motion to correct erroneous sentence with the trial court, which the trial court denied. James appealed this denial, and this court concluded:

James does not present any argument in the instant appeal relating to the propriety of the sentence imposed by the trial court on remand. James’s motion is based entirely on a claim relating to his initial sentence, which, again, was overturned by the

Indiana Supreme Court in *James I.* Given that this sentence has been overturned and is no longer in effect, we conclude that any error that may have existed in that initial sentence is no longer of any consequence. We therefore conclude that the trial court did not err in denying James's motion.

James v. State (“*James III*”), No. 64A03–1512–CR–2356, 2016 WL 2983905, at *3 (Ind. Ct. App. May 24, 2016).

- [3] On August 10, 2023, James filed another motion to correct erroneous sentence arguing the trial court's sentence is erroneous on its face because: (1) there is no statute defining habitual offender as a crime, therefore his adjudication as a habitual offender is a nullity; (2) that being sentenced to death and as a habitual offender is barred by double jeopardy; (3) that the sentence for his habitual offender enhancement is void because it was ordered to be served “consecutively” to his sentence for murder; and (4) that the trial court failed to award earned credit time of 1,446 days in the 1993 sentencing order. Appellant's App. Vol. 2 p. 46. The trial court denied the motion on October 9, 2023. James now appeals.

Discussion and Decision

- [4] At the outset, we note that James proceeds pro se and “[a] litigant is not given special consideration by virtue of his pro se status.” *Kelley v. State*, 166 N.E.3d 936, 937 (Ind. Ct. App. 2021) (citing *Sidener v. State*, 446 N.E.2d 965, 966 (Ind. 1983)). Rather, “a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-

represented.” *Stark v. State*, 204 N.E.3d 957, 963 (Ind. Ct. App. 2023) (quoting *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014)). James appeals the trial court’s denial of his motion to correct erroneous sentence pursuant to Indiana Code section 35-38-1-15. “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) (citing *Fry v. State*, 939 N.E.2d 687, 689 (Ind. Ct. App. 2010)). “An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it.” *Davis*, 978 N.E. 2d at 472 (citing *Myers v. State*, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999)).

- [5] Under Indiana Code section 35-38-1-15, an inmate who believes they were erroneously sentenced may file a motion to correct that sentence. The statute 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.

A motion to correct sentence “is available only to correct sentencing errors clear from the face of the judgment.” *Robinson v. State*, 805 N.E.2d 783, 794 (Ind. 2004). “The purpose of the statute ‘is to provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal

sentence.” *Id.* at 785 (citing *Gaddie v. State*, 566 N.E.2d 535, 537 (Ind.1991)). Further, “[c]laims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.” *Id.* at 787. “When claims of sentencing errors require consideration of matters outside the face of the sentencing judgment, they are best addressed promptly on direct appeal and thereafter via post-conviction relief proceedings where applicable.” *Id.* “[T]he 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 . . . be strictly applied” *Id.*

[6] James argues that the trial court abused its discretion denying his motion to correct erroneous sentence. On appeal, James raises the same issues he raised in his motion to correct erroneous sentence: (1) there is no statute defining habitual offender as a crime, therefore his adjudication as a habitual offender is a nullity; (2) that being sentenced to death and as a habitual offender is barred by double jeopardy; (3) that the sentence for his habitual offender enhancement is void because it was ordered to be served “consecutively” to his sentence for murder; and (4) that the trial court failed to award earned credit time of 1,446 days in the 1993 sentencing order. Appellant’s App. Vol. 2 p. 46.

[7] The first three arguments James raises require consideration of matters outside the sentencing order, and therefore, a motion to correct erroneous sentence was not the proper remedy. Disposing of James’s first three claims of error, we now turn to his fourth argument.

- [8] James argues that the trial court failed to award earned credit time in the 1993 sentencing order of 1,446 days. James provided our court with portions of his pronouncement of sentence and his abstract of judgment. James's pronouncement of sentence states, "Defendant to receive credit for time served, to-wit: 1,446 actual days (from 12-15-89)." Appellant's App. Vol. 2 p. 6.
- [9] In *Robinson*, our Supreme Court held "[s]entencing judgments that report only days spent in pre-sentence confinement and fail to expressly designate credit time earned shall be understood by courts and by the Department of Correction automatically to award the number of credit time days equal to the number of pre-sentence confinement days." 805 N.E.2d at 792. Our Supreme Court further held "[b]ecause the omission of designation of the statutory credit time entitlement is thus corrected by this presumption, such omission may not be raised as an erroneous sentence." *Id.*
- [10] Although the 1993 sentencing order did not expressly designate earned credit time awarded, based on *Robinson*, the order is presumed to automatically award James the number of credit time days equal to the number of pre-sentence confinement days. *See id.* Absent a deprivation of credit time in the sentencing order, James is not entitled to seek relief for credit time through a motion to correct erroneous sentence. *See id.*
- [11] We conclude that the trial court did not abuse its discretion in denying James's motion.
- [12] Affirmed.

Bailey, J. and Bradford, J., concur

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