

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

Robert R. Brandon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 21, 2021

Court of Appeals Case No.
20A-CR-2236

Appeal from the Elkhart Circuit
Court

The Honorable Michael A.
Christofeno, Judge

Trial Court Cause No.
20C01-1103-FA-7

Najam, Judge.

Statement of the Case

[1] Robert R. Brandon appeals the trial court’s denial of his motion to correct erroneous sentence. Brandon claims that his sentence is erroneous because it violates the prohibition against double jeopardy and because the court relied on improper aggravators. Brandon presents one issue for our review, namely, whether the trial court abused its discretion when it denied his motion.

[2] We affirm.

Facts and Procedural History

[3] On February 4, 2011, Dawn Alwine entered the home of Roy Tittle without knocking. *Brandon v. State*, No. 20A05-1202-CR-53, 2012 WL 3731329, at *1. Tittle, who was intoxicated, punched Alwine in the mouth. *Id.* Alwine returned to the party she had left and told Brandon and others that Tittle had punched her. *Id.* As a result, in the early morning hours of February 5, Brandon and several friends entered Tittle’s house and began “punching and stomping on” him. *Id.* The group then “ransacked” the house and stole various items. *Id.* Tittle sustained several injuries. *Id.* at *2.

[4] The State charged Brandon with robbery, as a Class A felony; burglary, as a Class A felony; and conspiracy, as a Class B felony. A jury found Brandon guilty as charged, and the trial court entered judgment of conviction accordingly. Following a sentencing hearing, the court identified numerous aggravators and some mitigators but found that the aggravators outweighed the mitigators. Accordingly, the court sentenced Brandon to concurrent sentences

of forty-eight years for the robbery and burglary convictions and to a consecutive term of twelve years for the conspiracy conviction, for an aggregate sentence of sixty years in the Department of Correction.

- [5] On direct appeal, this Court held that Brandon’s convictions for robbery and burglary violated the prohibition against double jeopardy. As such, we remanded with instructions for the trial court to reduce Brandon’s burglary conviction to a Class B felony. We also directed the trial court to impose a sentence of eighteen years on that count, to be served concurrent with his sentence for robbery. *Id.* at *5.
- [6] On October 21, 2020, Brandon filed a motion to correct erroneous sentence in which he alleged that his convictions and sentences violated double jeopardy principles and that every aggravator upon which the trial court had relied during sentencing was improper. *See* Appellant’s App. Vol. 2 at 42-44. The trial court found Brandon’s sentence “to be correct.” *Id.* at 39. In addition, the court found that the issues raised were “not properly brought before the trial court in a motion to correct erroneous sentence.” *Id.* Accordingly, the court denied Brandon’s motion. This appeal ensued.

Discussion and Decision

- [7] Brandon appeals the trial court’s denial of his motion to correct erroneous sentence. Generally, we review a trial court’s decision on a motion to correct erroneous sentence only for an abuse of discretion. *Bonds v. State*, 165 N.E.3d 1011, 1012 (Ind. Ct. App. 2021). An abuse of discretion occurs when the trial

court's decision is against the logic and effect of the facts and circumstances before it. *Id.*

[8] An inmate who believes he has been erroneously sentenced may file a motion to correct his sentence. *See* Ind. Code § 35-38-1-15 (2021). Such a motion “may only be filed to address a sentence that is ‘erroneous on its face.’” *Neff v. State*, 888 N.E.2d 1249, 1251 (Ind. 2008) (quoting *Robinson v. State*, 805 N.E.2d 783, 786 (Ind. 2004)). In other words, use of this statutory motion should be reserved for the correction of obvious sentencing errors. *Godby v. State*, 976 N.E.2d 1235, 1236 (Ind. Ct. App. 2012). “Claims that require consideration of matters outside the face of the sentencing judgment may not be addressed via this type of motion.” *Id.*

[9] On appeal, Brandon asserts that the trial court abused its discretion when it denied his motion to correct erroneous sentence because his convictions and sentences violate double jeopardy principles and because the court relied on improper aggravators when it sentenced him. However, we agree with the State that neither of those claims are “appropriate issues” for a motion to correct erroneous sentence. Appellee’s Br. at 7.

[10] This Court has previously held that a double jeopardy claim “is clearly beyond the purview of a motion to correct erroneous sentence, as it requires consideration of matters outside the face of the sentencing judgment.” *Micheau v. State*, 74 N.E.3d 567, 569 (Ind. Ct. App. 2017), *trans. denied*. Indeed, Brandon appears to acknowledge that his double jeopardy claim would be

resolved by a review of the charging information. *See* Appellant’s Br. at 22. But that is a matter beyond the face of the sentencing judgment and, as such, Brandon’s double jeopardy claim is not suitable for a motion to correct erroneous sentence.

[11] Similarly, Brandon’s claim that the court relied on improper aggravators is “not a proper claim for a motion to correct erroneous sentence[.]” *Godby*, 976 N.E.2d at 1236. Indeed, Brandon’s claim would necessarily require us to consider the evidence and argument presented at the sentencing hearing as well as Brandon’s PSI, which are matters outside the face of the judgment. Accordingly, Brandon’s claim is again unsuitable for this type of motion.

[12] Because neither claim is appropriate for a motion to correct erroneous sentence and because neither claim demonstrates that his sentence is erroneous on its face, the trial court did not abuse its discretion when it denied Brandon’s motion. We therefore affirm the trial court.

[13] Affirmed.

Riley, J., and Brown, J., concur.