MEMORANDUM DECISION

APPELLANT PRO SE

Laray Burks
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ATTORNEYS FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Laray D. Burks,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 28, 2023

Court of Appeals Case No. 23A-CR-541

Appeal from the Marion Superior Court

The Honorable Mark D. Stoner, Judge

Trial Court Cause No. 49G06-0010-FB-184541

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

[1] Laray D. Burks, pro se, appeals the trial court's denial of his motion to correct erroneous sentence. He argues that the trial court was without statutory authority to impose consecutive sentences between two different causes.

[2] We affirm.

Facts & Procedural History

[3] On September 5, 2000, Burks was arrested and charged with murder under Cause No. 45G06-0009-CF-155721 (CF-155721). He was subsequently convicted and, on April 12, 2002, sentenced to sixty-five years.

[4] On October 17, 2000, while housed in the Marion County Jail on the murder charge, the State charged Burks under Cause No. 49G06-0010-CF-184541 (CF-184541) with Class A felony attempted murder and Class B felony criminal confinement, stemming from an incident separate from and prior to that which gave rise to his murder conviction. On July 15, 2002, the State amended the charging information to add a charge of Class B felony attempted aggravated battery. Burks pled guilty to this amended charge, and the State dismissed the attempted murder and criminal confinement charges. The plea agreement provided for an executed sentence not to exceed twelve years. On August 23, 2002, the trial court sentenced Burks to ten years executed and ordered it to run consecutive to the sentence imposed in CF-155721.

[5] Twenty years later, on August 31, 2022, Burks, pro se, filed a motion to correct erroneous sentence under CF-184541, which the trial court denied the same day. Burks filed a second motion to correct erroneous sentence on January 18, 2023, asserting the same grounds as the first, which the trial court denied the following day. This denial was entered on the chronological case summary on January 20, 2023. Burks filed his notice of appeal on March 8, 2023.[1]

Discussion & Decision

[6] Burks argues that the trial court was without statutory authority to order his sentence in CF-184541 to be served consecutive to the sentence imposed in CF-155721. Our Supreme Court has held that

> a motion to correct 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. Claims that require consideration of the proceedings before, during, or after a trial may not be presented by way of a motion to correct sentence.

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[1] The appellate docket indicates that Burks mailed his notice of appeal on February 7, 2023, but that he did not serve such on the Attorney General. Eventually, Burks's notice of appeal was file stamped on March 8, 2023, and entered on the appellate docket on March 13, 2023. After Burks filed his appellant's brief, the State filed a motion to dismiss, asserting that Burks forfeited his right to appeal because he did not timely file his notice of appeal. *See* Ind. Appellate Rule 9(A)(1) (notice of appeal must be filed within thirty days from the time the final judgment is noted on the chronological case summary). This court's motions panel, with one judge dissenting, denied the State's motion to dismiss. The State asks that we reconsider the decision of the motions panel denying its motion to dismiss. While it is within our discretion to revisit a decision of the motions panel, we choose not to do so in this case. *See Pryor v. State*, 189 N.E.3d 167, 169 (Ind. Ct. App. 2022) (noting that this court has the inherent authority to reconsider a ruling by the motions panel).

Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004). Indeed, the Court has "repeatedly cautioned" that a motion to correct erroneous sentence is an available remedy only when a sentence is erroneous on its face, and such motion must be "narrowly confined" and "strictly applied" to claims apparent from the face of the sentencing judgment. *Id*. at 787-88. "As to sentencing claims not facially apparent, the motion to correct sentence is an improper remedy. Such claims may be raised only on direct appeal and, where appropriate, by post-conviction proceedings." *Id*.

[7] Here, the face of the sentencing judgment shows that the trial court imposed a ten-year sentence on a Class B felony and ordered it to be served consecutively to CF-155721. There is no error apparent on the face of the sentencing judgment. A motion to correct error is therefore an improper remedy.

[8] Moreover, Burks completely ignores the statutory provision dealing with discretionary consecutive sentences. *See* Ind. Code § 35-50-1-2(c) (providing that the court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time). Rather, he focuses his argument entirely on subsection (d), which mandates consecutive sentences in certain circumstances, none of which are applicable to him. More specifically, he argues that because he was not on probation, parole, or serving a term of imprisonment when he committed the present offense, the court could not impose consecutive sentences. Burks is wrong. Subsection (d) did not preclude the trial court from imposing consecutive sentences. The court had discretionary authority to impose consecutive sentences under subsection (c).

The trial court did not err in denying Burks's motion to correct erroneous sentence.

[9] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.