

## 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

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Jimmy Lee Nave, Jr.,

*Appellant-Plaintiff,*

v.

Frank Vanihel,

*Appellee-Defendant.*

January 19, 2022

Court of Appeals Case No.  
21A-MI-2204

Appeal from the Sullivan Superior  
Court

The Honorable Hugh R. Hunt,  
Judge

Trial Court Cause No.  
77D01-2109-MI-507

**Mathias, Judge.**

- [1] Jimmy Lee Nave, Jr., appeals the Sullivan Superior Court's order denying his petition for writ of habeas corpus, arguing that the State's use of uppercase

letters in the caption of the charging information renders his confinement in the Wabash Correctional Facility unlawful. We disagree and affirm.

## **Facts and Procedural History**

[2] In 2013, the State charged Nave with Class A felony kidnapping and Class B felony carjacking. The caption of the charging information styled the parties as “STATE OF INDIANA” and “JIMMY LEE NAVE, JR.” Appellant’s App. p. 5. Nave was ultimately convicted of kidnapping, and the trial court sentenced him to thirty-five years of incarceration. On September 9, 2021, eight years after he was tried and convicted, Nave filed a petition for writ of habeas corpus asserting that his confinement in the Wabash Correctional Facility is unlawful because he was prosecuted by the “STATE OF INDIANA,” rather than by “The State of Indiana.” *Id.* at 7–11. The trial court determined that there is “no basis in law” for Nave’s claim and dismissed his petition the next day. *Id.* at 4. Nave filed a motion to correct error on September 24, which the trial court also denied.

[3] Nave now appeals.

## **Discussion and Decision**

[4] We note initially that Nave appears pro se in this appeal, just as he did before the trial court. It is well settled that pro se litigants are not afforded any inherent leniency simply by virtue of being self-represented. [Willet v. State, 151 N.E.3d 1274, 1277 \(Ind. Ct. App. 2020\)](#).

- [5] Nave’s sole claim on appeal is that the State’s charging information contained a fatal typographic error; that, in turn, his conviction is invalid; that he has been unlawfully restrained as a result; and that he is therefore entitled to immediate release from confinement. More specifically, he argues that the charging information’s use of “STATE OF INDIANA,” in uppercased letters, instead of “State of Indiana,” in lowercased letters, “is inconsistent and in direct violation of the Indiana Constitution.” Appellant’s Br. at 9.
- [6] Regardless of the claim’s merit, Nave waited too long to raise it. A challenge to a purportedly defective charging information must generally be raised in a pre-trial motion to dismiss. *Neff v. State*, 915 N.E.2d 1026, 1031 (Ind. Ct. App. 2009); *see also Milo v. State*, 137 N.E.3d 995, 1003 (Ind. Ct. App. 2019) (“It is well settled that the proper method to challenge deficiencies in a charging information is to file a motion to dismiss the information.”). “Failure to challenge a defective charging information by way of a motion to dismiss before the trial court waives any such challenge on appeal.” *Wilhoite v. State*, 7 N.E.3d 350, 352 (Ind. Ct. App. 2014) (quoting *Neff*, 915 N.E.2d at 1031).
- [7] Nave, rather than filing a motion to dismiss or otherwise objecting to the contents of the charging information, waited until September 2021, eight years after his 2013 trial, to challenge the alleged defect he now complains of. As a result, Nave has waived this challenge on appeal.
- [8] Waiver notwithstanding, Nave’s claim lacks merit. The purpose of a charging information is to notify the defendant of the crime charged so that he can

prepare a defense. *Tanoos v. State*, 137 N.E.3d 1008, 1016 (Ind. Ct. App. 2019).

A charging information that enables the accused, the court, and the jury to determine the crime for which conviction is sought satisfies due process.

*Gutenstein v. State*, 59 N.E.3d 984, 995 (Ind. Ct. App. 2016). Errors in a charging information are fatal only if they mislead the defendant or fail to give him notice of the charge filed against him. *Id.*

- [9] Nave does not suggest that the uppercased “STATE OF INDIANA” in the caption of the charging information prevented him in any way from determining the crimes charged against him or mounting a defense. Moreover, though Nave declares that the caption contravenes the Indiana Constitution, he does not assert that he was denied due process. The uppercase titling of “STATE OF INDIANA” in a charging information’s caption does not change the party to whom the name refers, and it does not entitle Nave to immediate release from confinement by way of a habeas petition.

## Conclusion

- [10] For all of these reasons, we affirm the trial court’s dismissal of Nave’s petition for writ of habeas corpus.

Affirmed.

Bailey, J., and Altice, J., concur.