

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.



APPELLANT PRO SE
Torri E. Newman
Pendleton, Indiana

ATTORNEYS FOR APPELLEE
Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Torri E. Newman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 10, 2022

Court of Appeals Case No.
20A-CR-1923

Appeal from the Hamilton
Superior Court

The Honorable Michael A. Casati,
Judge

Trial Court Cause No.
29D01-1312-FA-10347

Altice, Judge.

Case Summary

- [1] Torri Elliot Newman, pro se, appeals from the trial court’s denial of his motion to correct erroneous sentence.
- [2] We affirm.

Facts & Procedural History

- [3] On December 13, 2013, Newman was charged with dealing in cocaine as a Class A felony.¹ Newman’s first jury trial ended in a mistrial. A second jury trial commenced on April 10, 2017, at the conclusion of which the jury found Newman guilty. On May 24, 2017, the trial court sentenced Newman to thirty years executed in the Department of Correction. In the sentencing order, the trial court noted that a sentencing hearing was held where the parties presented evidence, including the presentence investigation report, and argument. The sentencing order indicated that Newman was “found guilty after a trial by jury” but also that “a [p]lea of guilty is accepted.” *Appellant’s Appendix Vol. 2* at 54. The sentencing order sets out that the trial court imposed a sentence of thirty years and that “[n]o part of this sentence shall be suspended.” *Id.* Finally, the sentencing order stated that the sentence “shall be served *consecutively* to that

¹ Newman was also charged with two counts of possession of cocaine, one as a Class C felony and one as a Class D felony, and possession of a controlled substance as a Class D felony. These charges were dismissed on the State’s motion prior to trial.

imposed” under a separate cause in Marion County. *Id.* at 55 (emphasis in original).

[4] On September 8, 2020, Newman, pro se, filed a motion to correct erroneous sentence and supporting memorandum claiming that the trial court committed numerous errors in its sentencing order. On September 21, 2020, after the State filed its response, the trial court denied Newman’s motion. Newman filed a notice of appeal on October 16, 2020. On April 6, 2021, this court dismissed the appeal with prejudice for Newman’s failure to file an appellant’s brief. Newman filed a motion to reconsider on May 10, 2021, and this court reinstated his appeal on June 1, 2021. Newman’s brief and appendix were due no later than thirty days from the date of the order reinstating the appeal. On August 27, 2021, this court granted Newman’s request to file a belated brief. After delays due to defective filings by Newman, the State filed its brief on December 27, 2021.

Discussion & Decision

[5] Newman challenges the trial court’s denial of his motion to correct erroneous sentence. 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.

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.*

[6] Newman challenges the trial court’s denial of his motion to correct erroneous sentence on several bases. First, he claims the trial court erroneously indicated that the judgment of conviction was following a guilty plea when he was, in fact, found guilty by a jury. He thus argues, without citation to authority, that his judgment of conviction “cannot be upheld based on the trial court’s acceptance of a guilty plea.” *Appellant’s Brief* at 8. Second, Newman argues that the trial court acted beyond its statutory authority when it chose not to suspend any part of his sentence and, citing Ind. Code § 35-50-2-2.2, claims that the trial court should have sentenced him to the minimum sentence of twenty years for a Class A felony. In his third challenge, Newman argues that the trial court could not order his sentence to be served consecutive to the sentence imposed in another cause because the court did not identify aggravating factors to justify such in its sentencing order. Finally, Newman argues that the sentencing order is deficient because the court did not identify aggravating and mitigating circumstances or state its reasons for the sentence imposed.

- [7] Each of Newman’s claims are beyond the purview of a motion to correct erroneous sentence as they require consideration of matters outside the face of the sentencing judgment. For example, to review Newman’s third and fourth challenges, we would examine both the written and oral sentencing statements to discern the findings of the trial court with respect to aggravating and mitigating factors, its reasons for deciding the sentence imposed, and its decision to order the sentence be served consecutive to a sentence in another cause. *See McElroy v. State*, 865 N.e.2d 584, 589 (Ind. 2007).
- [8] Moreover, regarding his first challenge, we acknowledge the apparent clerical error in the sentencing order in that it indicates that Newman was found guilty by a jury and that he pleaded guilty. In either event, however, Newman is guilty of dealing in cocaine as a Class A felony, and he does not challenge that fact. The clerical error does not render his sentence erroneous. As to his second challenge, Newman’s argument is based upon a fundamental misunderstanding of I.C. § 35-50-2-2.2. That statute limits a trial court’s discretion to suspend a portion of a sentence in certain circumstances; it does not require a trial court to suspend any part of a sentence.
- [9] In short, the trial court did not err in denying Newman’s motion to correct erroneous sentence.
- [10] Judgment affirmed.

Bailey, J. and Mathias, J., concurs