

## MEMORANDUM DECISION

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### APPELLANT PRO SE

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## IN THE COURT OF APPEALS OF INDIANA

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Mark Richmond,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 24, 2023

Court of Appeals Case No.  
22A-CR-2433

Appeal from the Lake Superior  
Court

The Honorable Clarence D.  
Murray, Judge

The Honorable Mark Watson,  
Magistrate

Trial Court Cause No.  
45G02-0309-FA-25

**Memorandum Decision by Judge Bailey**  
Judges Brown and Weissmann concur.

**Bailey, Judge.**

## Case Summary

- [1] Mark Richmond, pro se, appeals the trial court's denial of his motion to correct erroneous sentence. We affirm, but we remand with instructions for the court to correct scrivener's errors in the abstract of judgment.

## Issues

- [2] Richmond raises two issues for our review:
1. Whether the court abused its discretion when it denied his motion to correct erroneous sentence.
  2. Whether his sentence is inappropriate in light of his character.

## Facts and Procedural History

- [3] On September 18, 2003, following an altercation with his wife, Richmond drove to the home of his wife's sister, broke into the home, and forced the sister to submit to oral sex and sexual intercourse. *See Richmond v. State*, No. 45A03-0607-CR-293, 2007 WL 925765, at \*1 (Ind. Ct. App. March 29, 2007) (mem.) ("*Richmond I*"). The following day, the State charged Richmond with various offenses, and the court held a jury trial. At the conclusion of the trial, the jury

found Richmond guilty of rape, as a Class B Felony;<sup>1</sup> criminal deviate conduct, as a Class B felony;<sup>2</sup> burglary, as a Class B felony;<sup>3</sup> and confinement, as a Class D felony.<sup>4</sup> The jury also found that Richmond was a habitual offender.<sup>5</sup> The court entered judgment of conviction accordingly and sentenced Richmond as follows: twenty years on each of the Class B felonies and three years on the Class D felony, and the court enhanced the sentence by thirty years for the habitual offender adjudication, for an aggregate sentence of ninety-three years. *See Appellant's App. Vol. 2 at 82.*

- [4] Richmond appealed his sentence, and this Court found that the trial court had treated “the habitual offender adjudication as a separate conviction,” which was “incorrect.” *Richmond I*, at \*2. As a result, this Court remanded the case to the trial court with instructions for the court to “provide a more explicit sentencing statement” and state to which felony conviction Richmond’s habitual offender adjudication attaches. *Id.* On remand, the trial court entered its “Explicit Sentencing Statement” and stated that the habitual offender adjudication “attaches to the Class (B) [Felony] Rape conviction” and sentenced Richmond as follows: twenty years, enhanced by thirty years, for the

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<sup>1</sup> Ind. Code § 35-42-4-1 (2003)

<sup>2</sup> I.C. § 35-42-4-2

<sup>3</sup> I.C. § 35-43-2-1

<sup>4</sup> I.C. § 45-42-3-3.

<sup>5</sup> I.C. § 35-50-2-8.

rape conviction; twenty years for the other two Class B felony convictions; and three years for the Class D felony conviction. The aggregate sentence remained ninety-three years. Appellant's App. Vol. 2 at 66.

[5] Richmond again appealed and asserted that his sentence was inappropriate in light of the nature of the offenses and his character. This Court held that, "[i]n light of the heinous nature of Richmond's offenses" and Richmond's "poor character," his sentence was not inappropriate. *Richmond v. State*, No. 45A03-0607-CR-293, 2010 WL 5395023, at \*2 (Ind. Ct. App. Dec. 22, 2010) (mem.) ("*Richmond II*"). Accordingly, this Court affirmed his sentence.

[6] On August 3, 2022, Richmond filed a motion to correct erroneous sentence. In that motion, Richmond asserted that "the trial court lacked statutory authority to sentence [him] to 50 years" on the rape conviction. In particular, Richmond argued that the habitual offender statute in effect at the time he committed the offenses capped any additional sentence at thirty years and that his aggregate fifty-year sentence for the rape conviction violated that statute. Appellant's App. Vol. 2 at 32. The court denied Richmond's motion without a hearing. This appeal ensued.

## Discussion and Decision

[7] Before we address Richmond's issues, we first note that there are two scrivener's errors in the abstract of judgment. The jury convicted Richmond of rape, as a Class B felony, and criminal deviate conduct, as a Class B felony.

And the court entered judgment of conviction accordingly. *See* Appellant's App. Vol. 2 at 81. However, the abstract of judgment indicates that Richmond was convicted of Class A felonies on both counts. *See id* at 80. While those errors are not substantive, we nonetheless remand with instructions for the court to correct the abstract of judgment to properly reflect Richmond's Class B felony convictions.

### **Motion to Correct Erroneous Sentence**

- [8] Richmond first contends that the court abused its discretion when it denied his motion to correct erroneous sentence. An inmate who believes he has been erroneously sentenced may file a motion to correct the sentence pursuant to Indiana Code Section 35-38-1-15, which 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.

- [9] We review a trial court's decision on a motion to correct erroneous sentence only for an abuse of discretion. *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. *Id.* In addition, the issue in this appeal also involves a question of statutory interpretation. When interpreting a statute, our primary goal is to determine and give effect to the

intent of the legislature. *Rodriguez v. State*, 129 N.E.3d 789, 796 (Ind. 2019).

We must give effect to the plain and ordinary meaning of statutory terms, and there is a presumption that the legislature intended the statutory language to be applied logically and consistently with the statute’s underlying policy and goals. *Id.*

[10] On appeal, Richmond contends that the trial court “lacked statutory authority to sentence [him] to 50 years” on the rape conviction. Appellant’s Br. at 8. To support his assertion, Richard relies on the habitual offender statute that was in effect at the time he committed the offenses. That statute provided that a court

shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three (3) times the presumptive sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

Ind. Code § 35-50-2-8(h) (2003). And the presumptive sentence for a Class B felony in 2003 was ten years. *See* I.C. § 35-50-2-5.

[11] Based on his reading of the statute, Richmond contends that “[t]he most that [he] could receive for the Class B felony on Count 1 is (30) years, which is three (3) times the presumptive for a Class B felony when applying the habitual offender enhancement.” Appellant’s Br. at 12. Richmond maintains that the “statute does not allow the trial court to *add* 30 years to the underlying offense” and that the “court abused its discretion when the sentence imposed exceeded thirty years.” *Id.* at 12, 18 (emphasis in original). We cannot agree.

[12] The habitual offender statute is clear. Indiana Code Section 35-50-2-8(h) simply limits any “additional” sentence imposed to three times the presumptive sentence, not to exceed thirty years. There is nothing in that statute that limits the aggregate sentence—the underlying sentence plus the enhancement—to thirty years. In other words, contrary to Richmond’s interpretation, the statute explicitly allows a court to add up to thirty years to the underlying sentence for a habitual offender adjudication. And here, as stated above, the presumptive sentence for a Class B felony conviction in 2003 was ten years. I.C. § 35-50-2-8. As such, the trial court was free to impose up to three times that amount—thirty years—for the habitual offender adjudication *in addition to* the sentence imposed for the underlying felony offense.

[13] At the time Richmond committed the offenses, a trial court could impose a sentence of up to twenty years for a Class B felony conviction. *See* I.C. § 35-50-2-5. Here, based on numerous aggravating factors, the court sentenced Richmond to twenty years on the Class B felony rape conviction.<sup>6</sup> The court then properly added an additional term of thirty years for the habitual offender adjudication. Based on the clear language of the habitual offender statute, we hold that the court did not err when it added thirty years to Richmond’s underlying twenty-year sentence. We therefore affirm the court’s denial of Richmond’s motion to correct erroneous sentence.

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<sup>6</sup> Richmond makes no argument that the twenty-year sentence for the underlying felony is erroneous.

## **Appropriateness of Sentence**

[14] Richmond next asks us to review and revise his sentence pursuant to Indiana Appellate Rule 7(B). In particular, Richmond asserts that his sentence is inappropriate in light of his character because he “has made substantial character changes” since the time of the offense. Appellant’s Br. at 22.<sup>7</sup> However, this is not the proper avenue for a claim under Appellate Rule 7(B). Indeed, our Supreme Court has held that “[w]hen 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.” *Robinson v. State*, 805 N.E.2d 783, 787 (Ind. 2004). And, here, Richmond’s claim would necessitate a review of materials outside the face of the sentencing order, namely, evidence of his changed character. Thus, the proper avenues for his claim were a direct appeal or a petition for post-conviction relief. In addition, Richmond has previously asked this Court to consider the appropriateness of his sentence, and, in *Richmond II*, this Court held that his sentence was not inappropriate. We therefore decline to again address the appropriateness of his sentence.

## **Conclusion**

[15] The habitual offender statute limited any additional term that may be imposed as a result of a habitual offender adjudication to thirty years; it did not limit the

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<sup>7</sup> He concedes that nothing about the nature of the offenses has changed.



aggregate sentence to thirty years. Because the court properly enhanced Richmond's underlying sentence by thirty years for the habitual offender adjudication as allowed by the statute, the court did not abuse its discretion when it denied Richmond's motion to correct erroneous sentence. In addition, we decline to consider Richmond's argument that his sentence is inappropriate in light of his character. We therefore affirm the trial court, but we remand with instructions for the court to correct the errors in the abstract of judgment.

[16] Affirmed and remanded with instructions.

Brown, J., and Weissmann, J., concur.