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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT DIXON,)
)
Appellant-Petitioner,)
)
vs.) No. 79A02-0701-PC-98
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0002-CF-9

June 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Robert Dixon appeals from the trial court's denial of his motion to correct erroneous sentence. Dixon presents a single issue for our review, namely, whether the trial court erred when it suspended a part of his sentence.

We affirm.

FACTS AND PROCEDURAL HISTORY

Dixon pleaded guilty to Dealing in Cocaine, as a Class B felony, and admitted to being an habitual offender. On October 2, 2001, the trial court sentenced him to fifteen years imprisonment, enhanced by fifteen years on the habitual offender count. The trial court suspended five years of the total sentence.

On July 31, 2006, Dixon filed a motion to correct erroneous sentence, alleging that the trial court erred in suspending a part of his sentence. The trial court denied Dixon's motion. Dixon then filed a Motion to File a Belated Notice of Appeal, which the court granted. This appeal ensued.

DISCUSSION AND DECISION

In Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004), our Supreme Court 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. Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the sentencing judgment, and the "facially erroneous" prerequisite should henceforth be strictly applied, notwithstanding [Jones v. State, 544 N.E.2d 492 (Ind. 1989), Reffett v. State, 571 N.E.2d 1227 (Ind. 1991), and Mitchell v. State, 726 N.E.2d 1228 (Ind. 2000)]. We therefore hold 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 trial may not be presented by way of a motion to correct sentence.

(Footnote omitted, emphasis added). Here, Dixon alleges a sentencing error that is clear from the face of the sentencing statement in light of the relevant statutory authority. As such, we address that issue.

Dixon contends that the trial court erred in suspending five years of his sentence. He argues that the suspension of his sentence is not permitted under Indiana Code Section 35-50-2-2. In particular, he maintains that because he was convicted of a Class B felony and sentenced as an habitual offender, his sentence cannot be suspended pursuant to Indiana Code Section 35-50-2-2(b)(1). We cannot agree.

Indiana Code Section 35-50-2-2 provides in relevant part that:

(a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence . . .

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

As pointed out in the State’s Brief, “[i]n his Brief of Appellant, Dixon underlines section 2.1 in the text of the statute and skips from (a) to (1) without mentioning (b), apparently concluding that 2.1 in the statute refers to subheading one.” Brief of Appellee at 3-4 (emphases changed). Indiana Code Section 35-50-2-2.1 pertains to “[s]uspension; persons with juvenile record[,]” and is not applicable here. Further, Dixon incorrectly

interprets Section 35-50-2-2(b)(1) as prohibiting the court from suspending any part of his sentence.

To the contrary, Section 35-50-2-2(b) only limits the court's discretion to the extent that the court can "suspend only that part of the sentence that is in excess of the minimum sentence" with respect to certain crimes. Dixon was convicted of a Class B felony and was an habitual offender, and, therefore, Section 35-50-2-2(b)(1) applies. The trial court suspended five years of Dixon's total sentence, which consists of fifteen years for dealing in cocaine and fifteen years enhanced for his habitual offender status. While the court suspended five years of the sentence, the executed sentence was more than the minimum six-year sentence applicable to Class B felonies. See Ind. Code § 35-50-2-5. Thus, the trial court did not err in suspending five years of Dixon's sentence. And the court did not err when it denied Dixon's motion to correct erroneous sentence.

Affirmed.

RILEY, J., and BARNES, J., concur.