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:

JAMES F. GLASS, SR.
Bunker Hill, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ELIZABETH ROGERS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JAMES F. GLASS, SR.,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 52A04-0608-CV-425
	)	
WALTER E. MARTIN, Superintendent of MIAMI CORRECTIONAL FACILITY,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable David A. Cox, Senior Judge
Cause No. 52C01-0604-MI-190

March 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-petitioner James F. Glass, Sr. appeals the Miami Circuit Court's denial of his application for writ of habeas corpus. Specifically, Glass, who was sentenced by the Marion Superior Court and filed this collateral attack in Miami County where he was incarcerated, argues that he is entitled to habeas corpus relief because the Marion Superior Court judge did not sign the judgment of conviction. Finding that any alleged technical irregularity in the manner of entering a judgment of conviction should have been asserted in a post-conviction petition in the court where the judgment was entered and that, nevertheless, Glass would not be entitled to habeas or post-conviction relief based upon his allegation of error, we affirm the judgment of the trial court.

FACTS

On June 9, 1988, the Marion Superior Court sentenced Glass to the Indiana Department of Correction (DOC) for forty years for his murder conviction. On April 14, 2006, Glass filed an application for writ of habeas corpus (habeas writ)[1] with the Miami Circuit Court and alleged that he was unlawfully detained in the Miami Correctional Facility because the trial judge from Marion Superior Court did not sign the judgment of conviction as required by Indiana Code section 35-38-3-2.[2] Glass attached an exhibit to his habeas

[1] In his habeas writ, Glass named John R. VanNatta—who was, at that time, the superintendent of the Miami Correctional Facility—as the respondent in the case. VanNatta has since been replaced by the current named respondent, Walter E. Martin.

[2] Indiana Code section 35-38-3-2 provides, in relevant part:

> (a) When a convicted person is sentenced to imprisonment, the court shall, without delay, certify, under the seal of the court, copies of the judgment of conviction and sentence to the receiving authority.
>
> (b) The judgment must include:

writ—Exhibit A—and this exhibit consisted of a copy of the front page only of the custody commitment order issued by the Marion Superior Court to the DOC. The commitment order revealed that Glass was convicted of murder, sentenced to the DOC for forty years, given 363 days of credit for time spent in confinement prior to sentencing, and found to be indigent. The commitment order also reveals that it was filed on June 9, 1988, with the Marion Superior Court Clerk, who certified it as a "true and complete copy of the judgment" that same day. Appellant's App. p. 6.

On June 22, 2006, the Miami Circuit Court held a hearing on Glass's habeas writ. During the hearing, the State offered Exhibit 1, which was a certified copy of documents from the DOC and consisted of the three pages. The first page of Exhibit 1 was the same as Glass's Exhibit A that was attached to his habeas writ. Page two of the exhibit consisted of the remaining page of the custody commitment order issued by the Marion Superior Court to the DOC and contained the signature of the Marion Superior Court judge that sentenced Glass. The third page consisted of the DOC's Abstract of Judgment form. Glass objected to the admission of page two of State's Exhibit 1 because it did not contain a file stamp and because it was "only a recommendation." Tr. p. 5. The trial court took the objection under

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(1) the crime for which the convicted person is adjudged guilty and the classification of the criminal offense;
(2) the period, if any, for which the person is rendered incapable of holding any office of trust or profit;
(3) the amount of the fines or costs assessed, if any, whether or not the convicted person is indigent, and the method by which the fines or costs are to be satisfied;
(4) the amount of credit, including credit time earned, for time spent in confinement before sentencing; and
(5) the amount to be credited toward payment of the fines or costs for time spent in

advisement.

On July 13, 2006, the trial court issued an order denying Glass's habeas writ. The trial court's order provided:

> 1. State's Exhibit A [sic][3] is admitted into evidence.
>
> 2. The Commitment to Custody admitted as part of Exhibit A [sic] is certified by Faye I. Mowery as a "true and complete copy of the judgment" of Marion Superior Court, charges the Sheriff with due execution "of the foregoing judgment" and, on the back side, is signed by the judge.
>
> 3. As [Glass] argues, the Abstract of Judgment attached to his Verified Application (which, in this case, was also signed by the committing judge) is not the same as the judgment required by Ind. Code § 35-38-3-2. Robinson v. State, 805 N.E.2d 783, 794 (Ind. 2004).
>
> 4. The Court finds that the Commitment to Custody satisfies the requirements of I.C. 35-38-3-2 and is a final judgment.
>
> The Application for Writ of Habeas Corpus is therefore denied.

Appellant's App. p. 9.

Glass then filed a motion to reconsider, which the trial court denied. Thereafter, Glass filed a motion to vacate or set aside the trial court's judgment pursuant to Indiana Trial Rule 60(B). The trial court also denied this motion, noting that Glass had provided only a portion of the commitment papers to the court and that his motion was "not well founded[.]" Id. at 13. Glass now appeals.

DISCUSSION AND DECISION

This case arises from the denial of Glass's petition for writ of habeas corpus relief.

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confinement before sentencing.

Indiana Code section 34-25.5-1-1 provides that "[e]very person whose liberty is restrained, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered from the restraint if the restraint is illegal." The purpose of the writ of habeas corpus is to bring the person in custody before the court for inquiry into the cause of restraint. Partlow v. Superintendent, Miami Corr. Facility, 756 N.E.2d 978, 980 (Ind. Ct. App. 2001). A petitioner is entitled to habeas corpus only if he is entitled to immediate release from unlawful custody. Id. However, a petitioner may not file a writ of habeas corpus to attack his conviction or sentence, and such an attack should be filed as a petition for post-conviction relief. Id. Indeed, if a petitioner erroneously captions his action as petition for a writ of habeas corpus rather than post-conviction relief, courts will frequently and properly treat the petition as one for post-conviction relief based on the content of the petition instead of the petition's caption. Id. Additionally, Indiana Post-Conviction Rule 1(1)(c) provides:

> This [Post-Conviction] Rule does not suspend the writ of habeas corpus, but if a petitioner applies for a writ of habeas corpus, in the court having jurisdiction of his person, attacking the validity of his conviction or sentence, that court shall under this Rule transfer the cause to the court where the petitioner was convicted or sentenced, and the latter court shall treat it as a petition for relief under this Rule.

Thus, a writ of habeas corpus that attacks a conviction or sentence must be transferred to the court of conviction and treated as though filed as a post-conviction relief petition.

Here, Glass is attacking the validity of his conviction and sentence from the Marion Superior Court in his habeas writ that he filed in Miami Circuit Court. First, because Glass is

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[3] It is apparent that the trial court erroneously referred to the State's exhibit as Exhibit A instead of Exhibit 1.

attacking his sentence, his habeas writ should have been treated as a petition for post-conviction relief. See P.C.R. 1(1)(a). Second, because his conviction was entered in Marion County, the Miami Circuit Court should have transferred the case to the Marion Superior Court. See P.C.R. 1(1)(c); see also Gross v. State, 444 N.E.2d 296, 301 (Ind. 1983) (holding that any technical irregularity in the manner of entering a judgment of commitment must be asserted in the court where the judgment was entered). Accordingly, while the Miami Circuit Court denied Glass's habeas writ on its merits, technically—pursuant to Indiana Post-Conviction Rule 1(1)—it should have dismissed Glass's habeas writ and transferred it to the Marion Superior Court for post-conviction review.

However, in the interest of judicial economy and the fact that the issue raised by Glass has been argued and the resulting record is before us, we, nonetheless, proceed to the merits of Glass's argument that he was entitled to relief because the Marion Superior Court judge failed to sign his judgment of conviction as required by Indiana Code section 35-38-3-2. See Hopkins v. State, 782 N.E.2d 988, 990-91 (Ind. 2003) (proceeding to the merits of the defendant's argument, which would have been entitled to a appellate review upon a denial of a post-conviction petition by the post-conviction court, in the interest of judicial economy and finding that the defendant would not have been entitled to relief on his claim in a post-conviction proceeding). Indeed, even had Glass's habeas writ been transferred, Glass would not be entitled to any post-conviction relief based upon his allegation of error. As revealed in the facts above and the record before us, the Marion Superior Court judge did sign the commitment papers, thereby bringing Glass's commitment in compliance with Indiana Code

section 35-38-3-2.[4] Therefore, although the Miami Circuit Court did not use the appropriate mechanism to dispose of Glass's habeas writ, it did reach the correct result—specifically, it did not grant relief to Glass based on his allegation that the Marion Superior Court judge failed to sign his judgment of conviction—and, as a result, we affirm the trial court's denial of Glass's application for writ of habeas corpus.

The trial court's judgment is affirmed.

DARDEN, J., and ROBB, J., concur.

[4] We also reject Glass's argument that the trial court erred by admitting State's Exhibit 1, which consisted of a certified copy of both pages of his commitment order.