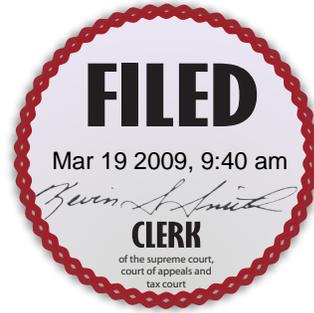


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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LARRY LATHAM, )

Appellant-Defendant, )

vs. )

STATE OF INDIANA, )

Appellee-Plaintiff. )

No. 03A01-0809-PC-440

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APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT  
The Honorable Stephen Heimann, Special Judge  
Cause No. 03D01-9604-CF-329

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**March 19, 2009**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Larry Latham (“Latham”) was convicted in Bartholomew Superior Court of Class B felony burglary and found to be a habitual offender. He was sentenced to a term of twenty years for the Class B felony burglary conviction with a thirty-year habitual offender enhancement. Latham filed a motion to correct erroneous sentence which the trial court denied. Latham appeals. We consolidate the issues raised by Latham and restate them as whether the trial court correctly denied Latham’s motion to correct erroneous sentence.

We remand.

### **Facts and Procedural History**

On February 12, 1997, Latham was convicted of Class B felony burglary. The trial court also found that he was a habitual offender. On April 30, 1997, the trial court sentenced Latham to twenty years for Class B felony burglary with a thirty-year enhancement for the habitual offender finding. Latham appealed, asserting the evidence was insufficient to support his conviction. We affirmed his conviction in a memorandum decision. Latham v. State, No. 03A05-9811-CR-581 (Ind. Ct. App. Aug. 12, 1999).

In April 2000, Latham filed a pro se petition for post-conviction relief. He again raised the issue of insufficient evidence and also alleged ineffective assistance of trial and appellate counsel. In April of 2002, Latham amended his petition but subsequently withdrew the amended petition and proceeded on the original petition only. The post-conviction court denied the relief. Latham appealed. We affirmed the post-conviction court in a memorandum decision. Latham v. State, No. 03A04-0207-PC-322 (Ind. Ct. App. April 9, 2003).

On March 6, 2008, Latham filed a motion to correct erroneous sentence. The trial court denied this motion on August 20, 2008. Latham appeals.

### **Discussion and Decision**

Latham's motion to correct erroneous sentence is based on Indiana Code section 35-38-1-15 (2004) 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.

The statute provides prompt, direct access to an uncomplicated legal process for correcting an erroneous or illegal sentence. Robinson v. State, 805 N.E.2d 783, 785 (Ind. 2004).

A motion to correct sentence is a remedy that is only appropriate when the sentence is "erroneous on its face." Mitchell v. State, 726 N.E.2d 1228, 1243 (Ind. 2000). A motion to correct sentence should be narrowly confined to claims apparent from the "face of the sentencing judgment, and the 'facially erroneous' prerequisite should henceforth be strictly applied." Robinson, 805 N.E.2d at 787. If a sentencing claim is not facially apparent then a motion to correct sentence is not a proper remedy. Id.

Latham raises a number of issues in his motion to correct erroneous sentence that should have been raised in a petition for post-conviction relief, including claims that the State added the habitual offender enhancement in an untimely manner and that the charges in support of the enhancement and the facts underlying those charges were either

inadequate or otherwise deficient. These issues do not relate to the sentence imposed and are therefore not appropriately argued in a motion to correct erroneous sentence.

However, Latham's appeal raises an issue that he failed to raise in his motion to correct erroneous sentence. Specifically, the Abstract of Judgment refers to the habitual offender enhancement as a separate and consecutive sentence and not as an enhancement of the Class B felony burglary sentence. The Chronological Case Summary correctly states the sentence imposed as follows:

DEFT SENTENCED TO 20 YEARS FOR BURGLARY WHICH IS  
ENHANCED BY 30 YEARS FOR BEING AN HABITUAL OFFENDER  
TO TOTAL 50 YEARS, NO TIME SUSPENDED.

Appellant's App. p. 4.

Although Latham failed to raise this issue in his motion to correct erroneous sentence and thereby technically waived this issue for appellate review, the State recognizes the confusion caused by the language of the abstract and correctly suggests that the abstract language should be clarified. Therefore we remand to the trial court to issue a new Abstract of Judgment that accurately reflects the habitual offender enhancement as set forth in the Chronological Case Summary.

Remanded for proceedings consistent with this opinion.

BAILEY, J., and BARNES, J., concur.