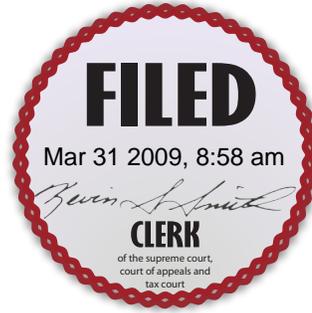


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

ATTORNEYS FOR APPELLEE:

EDWARD CHANDLER
Pendleton, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana
Indianapolis, Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

EDWARD CHANDLER,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0811-CR-987

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable John J. Boyce, Judge Pro Tempore
Cause No. 49G01-0301-FB-5498

MARCH 31, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPBACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Edward Chandler appeals the denial of his motion to correct erroneous sentence.

We affirm.

ISSUES

Chandler presents three issues for our review, which we consolidate and restate as:

- I. Whether the judge pro tempore was properly appointed such that he could rule upon Chandler's motion to correct erroneous sentence.
- II. Whether the trial court abused its discretion by denying Chandler's motion to correct erroneous sentence.

FACTS AND PROCEDURAL HISTORY

In January 2003, Chandler was charged with Count I robbery, Count II criminal confinement, Count III criminal confinement, and Count IV unlawful possession of a firearm by a serious violent felon. In addition, Chandler was alleged to be a habitual offender. Chandler was convicted of all charges and found to be a habitual offender. He was sentenced by the trial court to thirteen years on Count I, thirteen years on Count II, thirteen years on Count III with the habitual offender enhancement attached for an additional fourteen years, and ten years on Count IV.

Chandler took a direct appeal of his convictions and sentence. In an unpublished memorandum decision, this Court vacated Chandler's conviction on Count III based upon

a double jeopardy violation. *See Chandler v. State*, No. 49A02-0311-CR-964 (Ind. Ct. App. July 7, 2004). In light of the Court’s opinion, the trial court modified Chandler’s sentence in September 2004 to thirteen years on Count I, thirteen years on Count II, and ten years on Count IV.

In March 2008, the trial court held a hearing to review Chandler’s sentence. At the hearing, the court re-attached the habitual offender enhancement to Count I for a total of twenty–seven years, with Counts II and IV remaining the same at thirteen years and ten years, respectively. On September 12, 2008, Chandler filed his motion to correct erroneous sentence with the trial court. In his motion, Chandler argued that vacation of his conviction on Count III, to which the habitual offender enhancement was originally attached, vacated the habitual offender adjudication as well, and that it was improper for the trial court to re-attach the habitual offender enhancement to one of the remaining counts. The trial court denied Chandler’s motion, and this appeal ensued.

DISCUSSION AND DECISION

I. APPOINTMENT OF JUDGE PRO TEMPORE

Chandler first contends that the judge pro tempore who ruled on his motion to correct erroneous sentence was not “duly appointed” to do so. Appellant’s Brief at 4. We observe that of the three cases Chandler cites in support of this assertion, two are no longer good law and the third is distinguishable from this case in that it concerns a master commissioner who did not fulfill his statutory duty of submitting his recommendations to the regular judge. *See Hill v. State*, 611 N.E.2d 133 (Ind. Ct. App. 1993), *Scruggs v.*

State, 609 N.E.2d 1148 (Ind. Ct. App. 1993), and *Rivera v. State*, 601 N.E.2d 445 (Ind. Ct. App. 1992), respectively.

Nevertheless, Chandler has waived appellate review of this claim. In *Gordy v. State*, 262 Ind. 275, 315 N.E.2d 362 (1974), our supreme court held that ““when a judge has been called or an attorney appointed to try a cause, and no objection is made at the time, or to his sitting in the cause when he assumes to act, all objections thereto will be deemed waived on appeal.”” *Id.* at 367 (quoting *Jordan v. Indianapolis Coal Co.*, 52 Ind. App. 542, 544-45, 100 N.E. 880 (1913)); see also *Floyd v. State*, 650 N.E.2d 28, 32 (Ind. 1994). Moreover, the court declared it saw no reason why the rule announced and applied to special judges should not apply with equal force to a judge pro tempore. See *Gordy*, 315 N.E.2d at 367. Chandler has neither asserted nor shown that he objected to the judge pro tempore presiding over the hearing on his motion to correct erroneous sentence. This issue is therefore waived.

II. MOTION TO CORRECT ERRONEOUS SENTENCE

Chandler argues that the trial court erred when it denied his motion to correct erroneous sentence. In his motion, he claims that when this Court vacated his conviction on Count III, to which the habitual offender adjudication was attached, the habitual offender adjudication was vacated also. Additionally, Chandler maintains that the trial court improperly re-attached the habitual offender adjudication to Count I.

Chandler's claims are not properly presented in a motion to correct erroneous sentence. In *Robinson v. State*, 805 N.E.2d 783 (Ind. 2004), our supreme court addressed

the difference between a motion to correct erroneous sentence and a petition for post-conviction relief. The court held that a motion to correct erroneous sentence may only be used to correct sentencing errors that are clear from the face of the judgment. *Id.* at 787. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct erroneous sentence. *Id.* Sentencing claims that are not facially apparent "may be raised *only* on direct appeal and, where appropriate, by post-conviction proceedings." *Id.* (emphasis added).

Here, the alleged vacation of Chandler's habitual offender adjudication and the propriety of the trial court's re-attachment of the habitual offender adjudication require consideration of matters outside the face of the sentencing judgment. Thus, Chandler's arguments were not the types of claims that are properly presented by way of a motion to correct erroneous sentence. *See Bauer v. State*, 875 N.E.2d 744, 746 (Ind. Ct. App. 2007), *trans. denied*, 891 N.E.2d 36 (2008) (affirming denial of motion to correct erroneous sentence because claims presented required consideration of matters outside face of judgment).

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that Chandler waived his argument regarding the propriety of the appointment of the judge pro tempore. In addition, the trial court properly denied Chandler's motion to correct erroneous sentence because the claimed errors regarding his habitual offender adjudication are not apparent on the face of the judgment.

Affirmed.

RILEY, J., and FRIEDLANDER, J., concur.