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APPELLANT PRO SE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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RICHARD A. OSTRANDER, )

Appellant-Defendant, )

vs. )

STATE OF INDIANA, )

Appellee-Plaintiff. )

No. 57A03-0606-PC-258

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APPEAL FROM THE NOBLE CIRCUIT COURT  
The Honorable Michael J. Kramer, Special Judge  
Cause No. 57C01-0204-FB-16

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**June 27, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Richard Ostrander appeals the denial of his motion to correct erroneous sentence.

We dismiss.

### **Issue**

We only address the dispositive issue raised by the State on cross-appeal, which we restate as whether Ostrander may appeal the denial of his motion to correct erroneous sentence.

### **Facts<sup>1</sup>**

On April 14, 2002, Ostrander was charged with Class B felony unlawful possession of a firearm by a serious violent felon, Class D felony possession of a sawed-off shotgun, Class D felony habitual traffic offender, Class D felony resisting law enforcement, Class A misdemeanor resisting law enforcement, Class D felony driving while intoxicated, and was alleged to be an habitual offender. The Class D felony habitual traffic offender count was orally amended to Class C felony operating after a lifetime suspension. On October 9, 2002, Ostrander pled guilty to Class B felony possession of a firearm by a serious violent felon, Class C felony operating after a lifetime suspension, Class D felony resisting law enforcement, and Class D felony driving while intoxicated. The remaining charges and the habitual offender enhancement were dismissed.

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<sup>1</sup> Ostrander did not file an appendix. The State filed one that included the necessary information.

On November 11, 2002, Ostrander was sentenced. Pursuant to the plea agreement, the trial court sentenced Ostrander to seventeen years on the Class B felony, eight years on the Class C felony, and three years on each on the Class D felonies.<sup>2</sup> These sentences were ordered to be served concurrently.

On May 2, 2005, Ostrander filed a motion to correct erroneous sentence. The State responded, and this motion was denied on June 20, 2005. On April 19, 2006, Ostrander filed a petition for permission to file a belated appeal of his sentence. On April 25, 2006, this motion was granted, and on May 9, 2006, Ostrander filed his notice of appeal. Ostrander now appeals the denial of his motion to correct erroneous sentence.

### **Analysis**

In his brief, Ostrander argues that his sentence is facially erroneous because it violates double jeopardy and because his plea agreement was illegal. He argues that the trial court should have granted his motion to correct erroneous sentence. In fact, the argument section of his brief is virtually identical to his motion to correct erroneous sentence.

As the State points out, however, Ostrander did not timely appeal the June 20, 2005 denial of his motion to correct erroneous sentence. The State asserts that, instead, Ostrander sought permission to belatedly appeal his sentence as if he were filing a direct appeal. Indeed, in his petition for permission to file a belated appeal, Ostrander specifically refers to the right to file a “direct appeal” and Collins v. State, 817 N.E.2d

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<sup>2</sup> Pursuant to the plea agreement, the trial court ordered the seventeen-year-sentence to be served consecutive to the sentences in two unrelated cases.

230 (Ind. 2004). It is on this basis that the trial court granted Ostrander permission to file a belated appeal, not the denial of his motion to correct erroneous sentence. Ostrander may not now belatedly appeal the denial of his motion to correct erroneous sentence.

### **Conclusion**

The trial court did not give Ostrander permission to belatedly appeal the denial of his motion to correct erroneous sentence. We are without jurisdiction to consider the merits of Ostrander's claim. We dismiss.

Dismissed.

NAJAM, J., and RILEY, J., concur.