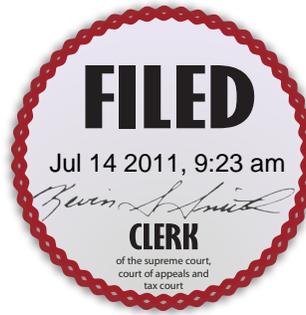


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KARL NEIL ROBINSON,)

Appellant,)

vs.)

No. 20A03-1011-CR-610

STATE OF INDIANA,)

Appellee.)

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Gene R. Duffin, Senior Judge
Cause No. 20C01-8707-CF-42

July 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Karl Neil Robinson, pro se, appeals the trial court's denial of his motion to correct erroneous sentence. The sole restated issue presented for our review is whether the trial court abused its discretion when it denied his motion to correct erroneous sentence. Finding no abuse of discretion, we affirm the judgment of the trial court.

Facts and Procedural History

On July 31, 1987, the State charged Robinson with class C felony battery by means of a deadly weapon. The State subsequently also charged Robinson with being a habitual offender. Following a bifurcated jury trial, on June 7 and 8, 1988, Robinson was found guilty as charged. On July 14, 1988, the trial court sentenced Robinson to eight years imprisonment on the class C felony conviction. That sentence was then enhanced by twenty years for the habitual offender finding. Specifically, regarding the habitual offender enhancement, the sentencing order provided that "one of the prior felonies used to convict the Defendant was a Class D felony and the Court subtracts ten (10) years from the fixed thirty-year term." Appellant's App. at 36. The abstract of judgment, filed on July 18, 1988, provided that ten years of the thirty-year enhancement was ordered "suspended." Appellant's App. at 39. This resulted in an aggregate term of twenty-eight years' imprisonment.

Robinson filed a direct appeal challenging the sufficiency of the evidence of both his battery conviction and the habitual offender finding. His conviction and the habitual finding were affirmed by our supreme court in *Robinson v. State*, 543 N.E.2d 1119 (Ind. 1989). In February of 2006, Robinson was released from prison and reported to the Elkhart County

Probation Department. Robinson refused to sign the probation paperwork because he did not believe that he was supposed to serve any time on probation. Nevertheless, Robinson continued to report to a probation officer.

Robinson was arrested on August 10, 2006, and charged with class C felony robbery. Thereafter, on August 24, 2006, the probation department filed a notice of probation violation against Robinson. A probation violation hearing was held on November 16, 2006. During the hearing, Robinson admitted committing the class C felony robbery, which constituted a probation violation. However, Robinson argued to the court that, in 1988, although the sentencing court subtracted ten years from the thirty-year habitual offender enhancement, the sentencing order did not specifically state that the ten years was “suspended” and to be served on probation. The trial court disagreed with Robinson and revoked his probation, thereby ordering Robinson to serve the suspended ten-year portion of his sentence. Apparently, Robinson did not appeal the trial court’s revocation.

On October 5, 2010, Robinson wrote a letter to the trial court requesting that it correct his allegedly erroneous sentence. On October 29, 2010, the trial court entered its findings of fact and conclusions thereon denying Robinson’s request. This appeal ensued.

Discussion and Decision

Robinson appeals the trial court’s denial of his motion to correct erroneous sentence. We review a trial court’s decision on a motion to correct erroneous sentence only for an abuse of discretion and we defer to the trial court’s factual findings. *Fry v. State*, 939 N.E.2d 687, 689 (Ind. Ct. App. 2010) (citations omitted). An abuse of discretion occurs when the

trial court's decision is against the logic and effect of the facts and circumstances before it.

Id.

An inmate who believes that he has been erroneously sentenced may file a motion to correct the sentence pursuant to Indiana Code Section 35-38-1-15, which provides:

If that 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.

Our supreme court has held that a motion to correct erroneous sentence is available only when the sentence is "erroneous on its face." *Robinson v. State*, 805 N.E.2d 783, 786 (Ind. 2004). "Claims that require consideration of proceedings before, during, or after trial may not be presented by way of a motion to correct erroneous sentence." *Id.* at 787. Indeed, "[a]s to sentencing claims not facially apparent, the motion to correct erroneous sentence is an improper remedy." *Id.* Those sentencing claims may be raised only on direct appeal and, where appropriate, by post-conviction proceedings. *Id.*

We note that Robinson brings his appeal pro se. Pro se litigants are held to the same standard as trained legal counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2005), *trans. denied*. Indiana Appellate Rule 46(A)(8)(a) provides that an appellant's argument must contain the contentions of the appellant on each issue presented, supported by cogent reasoning and citation to authorities, statutes, and the appendix or parts of the record on appeal that are relied upon.

Robinson has failed to include his written request to correct erroneous sentence in his appellant's appendix and thus gives this Court no aid in discerning the specific facial defect he complains of in his original sentence. The crux of Robinson's argument appears to be that no portion of his original 1988 sentence was specifically ordered suspended to probation, and therefore he could not have been found to have violated probation in 2006 because he was never placed on probation in the first place. However, a review of the 1988 sentencing order itself does not establish facial error. Robinson's contention requires that we analyze matters beyond the face of the sentencing judgment, such as the trial court's 2006 determination that he was indeed on probation and that he violated the same, which we may not do.

As noted by the State, during his 2006 probation revocation hearing, Robinson argued that the terms of his 1988 sentence did not provide for any part of his sentence to be suspended to probation and that he could not be in violation of a term of probation upon which he was never placed. The trial court ruled against Robinson and entered judgment that Robinson had indeed violated probation. Robinson failed to appeal that order, and consequently, the current appeal from the trial court's denial of his motion to correct erroneous sentence is not the correct procedural avenue for Robinson to pursue. Robinson is constrained to bring this issue in a petition for post-conviction relief if he so desires. Accordingly, we affirm the trial court's denial of Robinson's motion to correct erroneous sentence.

Affirmed.

ROBB, C.J., and NAJAM, J., concur.