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IN THE
COURT OF APPEALS OF INDIANA

PAUL HESS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 25A04-0907-CR-402
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FULTON SUPERIOR COURT
The Honorable Wayne Steele, Judge
Cause No. 25D01-0707-FC-00246

DECEMBER 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Paul Hess appeals the denial of his motion to correct erroneous sentence. We affirm.

The sole issue for our review is whether the trial court properly denied Hess' motion.

In September 1981, a grand jury indicted Hess for child molesting as a Class C felony. Hess left the jurisdiction before charges were filed. He was arrested in Texas in 1986 while crossing the border to Mexico. The State of Indiana began extradition proceedings, but Hess posted bond and left that jurisdiction as well. In July 2007, Hess was arrested again in his Michigan City home for the 1981 charge.

In June 2008, the trial court accepted Hess' plea agreement, which included a provision that sentencing would be left to the discretion of the trial court except that the executed portion of the sentence would not be more than two years. The plea agreement also provided that Hess would be sentenced according to the sentencing criteria in effect at the time of the commission of the offense in 1981.

The trial court sentenced Hess to eight years, with two years executed and six years suspended to probation. In addition, the court imposed the following terms of probation: 1) register with law enforcement authorities as a sex offender; 2) do not live within 1,000 feet of a school; 3) successfully complete a sex offender treatment program; 4) comply with the court attendance policy for treatment and counseling appointments; 5) do not possess pornographic or sexually explicit materials; 6) inform all persons living at your place of residence about your sex-related convictions; 7) do not travel alone after

10:00 p.m.; 8) do not work in occupations that involve being in the private residences of others; 9) have no contact with the victim or her family; 10) do not go to areas in your community where children are known to congregate; 11) do not participate in any activity that involves children under 18 years of age; 12) sign a waiver of confidentiality for your treatment providers; 13) complete periodic polygraph testing; 14) keep a journal of daily activities and report to your probation officer as directed; 15) do not use any computer with access to on-line services; 16) allow your probation officer to conduct periodic unannounced examinations of your home computer equipment; 17) do not reside within one mile of the victim's residence; 18) serve three years on home detention; and 19) report to the Fulton County Probation department within 72 hours of your release. Appellant's App. at 11-15.

In late 2008, Hess appealed his sentence. His sole argument was that the trial court erred in ordering him to serve three years of home detention as a condition of probation because the law in effect in 1981 did not authorize home detention as a condition of probation. In early 2009, this court agreed with Hess and reversed that portion of the trial court's sentencing order that imposed home detention as a condition of probation and remanded with instructions for the trial court to correct the sentencing order. In March 2009, the trial court complied with this court's instructions.

On May 1, 2009, Hess filed a motion to correct erroneous sentence wherein he argued that the statute in effect in 1981 did not provide for six of the additional probation

requirements. Hess amended the motion two weeks later. The trial court denied Hess' motion, and Hess appeals.

A motion to correct erroneous sentence is a statutory remedy that provides prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence. *Robinson v. State*, 805 N.E.2d 783, 785 (Ind. 2004) (citing *Gaddie v. State*, 566 N.E.2d 535, 537 (Ind. 1991)). It is appropriate, however, only when the sentence is erroneous on its face. *Robinson*, at 787. This statutory remedy is not available when the claim requires consideration of matters outside the face of the sentencing judgment or proceedings before, during or after trial. *Id.* For sentencing claims that are not facially apparent, the motion to correct erroneous sentence is an improper remedy. *Id.* Such claims may be raised only on direct appeal and, where appropriate, by post-conviction proceedings. *Id.*

Here, Hess' arguments require us to consider matters outside the face of the sentencing judgment, such as the plea agreement. Accordingly, Hess had no basis for filing a motion to correct erroneous sentence, and the trial court properly denied it. *See Hakim v. State*, 806 N.E.2d 774, 775 (Ind. 2004) (concluding that where Hakim had no basis for filing a motion to correct erroneous sentence, the trial court properly denied a motion to correct error under the Indiana Supreme Court's holding in *Robinson*).

Affirmed.

KIRSCH, J., and BAILEY, J., concur.