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APPELLANT PRO SE:

**KEVIN RICHTER**  
Indiana State Prison  
Michigan City, Indiana

ATTORNEYS FOR APPELLEE:

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Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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KEVIN RICHTER, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. ) No. 76A03-0611-PC-538  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

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APPEAL FROM THE STEUBEN CIRCUIT COURT  
The Honorable Allen Wheat, Judge  
Cause No. 76C01-8910-CF-58

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**September 5, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Kevin Richter (Richter), appeals the trial court's denial of his motion to correct erroneous sentence.

We affirm.

## ISSUE

Richter raises one issue on appeal, which we restate as follows: Whether the trial court correctly denied Richter's motion to correct erroneous sentence.

## FACTS AND PROCEDURAL HISTORY

On April 6, 1990, Richter was convicted of two Counts of Class A felony dealing in cocaine and was adjudicated an habitual offender, as the result of two prior Class D felony theft convictions. The trial court sentenced Richter to thirty years for each dealing in cocaine conviction to be served concurrently, enhanced by thirty years for the habitual offender adjudication. On September 26, 2003, Richter filed a Motion for Modification of Sentence. On July 21, 2006, after a hearing on the motion, the trial court reduced Richter's sentence to forty years imprisonment followed by five years probation. On October 27, 2006, Richter filed a Motion to Correct Erroneous Sentence, which was subsequently denied by the trial court November 1, 2006.

Richter now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

Richter claims the trial court erred when it denied his motion to correct erroneous sentence. Specifically, Richter contends that because he was adjudicated an habitual offender based on two Class D felony offenses, the trial court could only enhance his

sentence by eight years, as opposed to the thirty-year enhancement. Conversely, the State maintains the trial court properly denied Richter's motion for two reasons: (1) all felony convictions, including the felony conviction enhanced by the habitual offender adjudication, must be Class D felonies in order for the eight-year maximum enhancement to be applicable; and (2) Richter failed to provide a copy of the judgment from his sentencing, thereby making the motion to correct an erroneous sentence inapplicable.

Richter relies on *Slocumb v. State*, 573 N.E.2d 427 (Ind. 1991), and *Rowold v. State*, 629 N.E.2d 1285 (Ind. Ct. App. 1994), for the proposition that, pursuant to Ind. Code § 35-50-2-7.1 (1985),<sup>1</sup> when adjudicating a defendant as a habitual offender and all the prior convictions relied upon to support the finding of the defendant's status as a habitual offender are Class D felonies, the presumptive sentence enhancement is eight years. However, as the State argues, I.C. § 35-50-2-7.1 (1985) lowered the presumptive sentence enhancement to eight years only if all of the offender's prior felonies, *as well as the enhanced felony*, are of the Class D felony level. *See Johnson v. State*, 593 N.E.2d 1181, 1181-1182 (Ind. 1992). Because Richter's enhanced offenses are Class A felonies, I.C. § 35-50-2-7.1 (1985) does not apply. Thus, the trial court correctly denied his motion to correct erroneous sentence.

### CONCLUSION

Based on the foregoing, we conclude the trial court correctly denied Richter's motion to correct erroneous sentence.

Affirmed.

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<sup>1</sup> I.C. § 35-50-2-7.1 was repealed by P.L. 164-1993, Sec. 14 in 1993.

SHARNACK, J., and FRIEDLANDER, J., concur.