

STATEMENT OF THE CASE

William H. Carnahan appeals the trial court's grant of the State's motion to correct erroneous sentence and, its entry of a new sentencing order imposing a lifetime suspension of his driving privileges.

We affirm.

ISSUE

Whether the trial court properly granted the State's motion to correct erroneous sentence.

FACTS

On February 6, 2004, Carnahan was arrested by an officer of the Columbus Police Department. On February 17, 2004, he was charged with receiving stolen automobile parts and operating a vehicle after being adjudged an habitual traffic violator,¹ as class D felonies. On January 10, 2005, he pleaded guilty to the charged offenses. On February 14, 2005, the trial court imposed two consecutive two and one-half year sentences. The court's sentencing order did not address the suspension of Carnahan's driving privileges. Nor did the trial court notify the Bureau of Motor Vehicles of Carnahan's conviction.

Following discovery of the alleged sentencing order, the State filed a motion to correct erroneous sentence on August 3, 2009, wherein it argued that the trial court had erred in failing to impose a lifetime suspension of Carnahan's driving privileges, as required under Indiana Code section 9-30-10-16(c). The State also filed a certified copy

¹ Ind. Code § 9-30-10-16(A)(1).

of Carnahan's driving record. At a hearing on September 10, 2009, Carnahan objected to the State's motion to correct erroneous sentence, and the trial court overruled the objection. The trial court subsequently determined that Carnahan was entitled to court-appointed counsel, and appointed counsel to represent him at the hearing on the State's motion to correct erroneous sentence, scheduled for September 21, 2009.

At the September 21, 2009 hearing, the State asked the trial court to take judicial notice of the contents of the record which reflected that Carnahan's driving privileges had not been suspended for life as required by Indiana Code section 9-30-10-16(A)(1). Carnahan, by counsel, argued that the doctrine of *laches* barred the belated correction of his sentence.² The trial court heard argument of counsel and took the matter under advisement. On September 22, 2009, the court entered an order, wherein it granted the State's motion and corrected its February 14, 2005 sentencing order to reflect a lifetime suspension of Carnahan's driving privileges, effective February 14, 2005. Carnahan now appeals.

DECISION

Carnahan argues that the trial court erred in granting the State's motion to correct erroneous sentence. Citing *Robinson v. State*, 805 N.E.2d 783, 787 (Ind. 2004) for the

² Carnahan argued that because four years had elapsed since the trial court's entry of its sentencing order, the State's attempt to correct Carnahan's sentence was barred by the doctrine of *laches*, which "operates to bar consideration of the merits of a claim or right of a person who has neglected for an unreasonable time, under circumstances permitting due diligence, to do what in law should have been done." *Armstrong v. State*, 747 N.E.2d 1119, 1122 (Ind. 2001). Like the trial court, we are not persuaded. *See Benson v. State*, 780 N.E.2d 413, 423 (Ind. Ct. App. 2002) (holding that sentencing errors are not subject to waiver and may be raised at any time), *trans. denied*.

proposition that “claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence,” he argues that by filing a certified copy of his driving record and asking the court to take judicial notice of the contents of the record, the State “invi[ted] a review of more than just the sentencing order being complained of as being erroneous.” Carnahan’s Br. at 7. Thus, he argues, a motion to correct erroneous sentence was the wrong vehicle for the State’s challenge to the trial court’s sentencing order. We are not persuaded.

When reviewing the trial court’s decision on a motion to correct erroneous sentence, we “defer to the trial court’s factual findings” and review the decision “only for abuse of discretion.” *Brattain v. State*, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002). 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.* “However, we will ‘review a trial court’s legal conclusions under a *de novo* standard of review.’” *Id.* (quoting *Mitchell v. State*, 726 N.E.2d 1228, 1243 (Ind. 2000)).

The State’s motion to correct erroneous sentence derives from Indiana Code section 35-38-1-15, the purpose of which “is to provide prompt, direct access to an uncomplicated legal process for correction of the occasional erroneous or illegal sentence.” *Robinson v. State*, 805 N.E.2d 783, 785 (Ind. 2004) (quoting *Gaddie v. State*, 566 N.E.2d 535, 537 (Ind. 1991)). A statutory motion to correct erroneous sentence “is appropriate only when the sentence is ‘erroneous on its face.’” *Robinson*, 805 N.E.2d at 787. “Sentencing claims that are not facially apparent ‘may be raised only on direct

appeal and, where appropriate, by post-conviction proceedings.’” *Id.* (citing *Jones v. State*, 544 N.E.2d 492, 496 (Ind. 1989)). A statutory motion to correct sentence can be used to correct errors such as illegal sentences in violation of express statutory authority. *Robinson*, 805 N.E.2d at 786 (citing *Jones*, 544 N.E.2d at 496). Such is the case here.

Indiana Code section 9-30-10-16 provides,

(a) A person who operates a motor vehicle:

(1) while the person’s driving privileges are validly suspended under this chapter or IC 9-12-2 (repealed July 1, 1991) and the person knows that the person’s driving privileges are suspended; or

(2) in violation of restrictions imposed under this chapter or IC 9-12-2 (repealed July 1, 1991) and who knows of the existence of the restrictions; commits a Class D felony.

* * *

(c) In addition to any criminal penalty, a person who is convicted of a felony under subsection (a) forfeits the privilege of operating a motor vehicle for life. * * *

I.C. § 9-30-10-16. After Carnahan’s conviction, pursuant to his guilty plea, of class D felony operating a vehicle after having been adjudged an habitual traffic offender, by operation of law, he mandatorily “forfeit[ed] the privilege of operating a motor vehicle for life.” *Id.* It is undisputed that his driving privileges were validly suspended at the time of his arrest on February 6, 2004, and that he had notice thereof.

The trial court’s failure to impose the lifetime suspension of Carnahan’s driving privileges in its sentencing order rendered Carnahan’s sentence an illegal sentence in violation of the express statutory authority of Indiana Code section 9-30-10-16. *See Henson v. State*, 881 N.E.2d 36, 38 (Ind. Ct. App. 2008) (“A sentence that is contrary to or violative of a penalty mandated by statute is illegal in the sense that it is without

statutory authorization), *trans. denied*. Moreover, the trial court’s failure to impose the lifetime suspension of Carnahan’s driving privileges in its sentencing order is a “facially apparent” sentencing error. *Robinson*, 805 N.E.2d at 787. Courts are required to follow the law as enacted and “are duty bound to correct an illegal sentence”; thus, we find no error from the trial court’s grant of the State’s motion to correct erroneous sentence. *Hull v. State*, 799 N.E.2d 1178, 1181 (Ind. Ct. App. 2003).

Affirmed.³

KIRSCH, J., and MAY, J., concur.

³ Carnahan asserts that the State’s filing of his certified driving record and request that the trial court review the contents of its case file indicates that the State’s claim “require[d] consideration of the proceedings before, during, or after trial,” which is not permitted when employing the statutory motion to correct erroneous sentence. *Robinson*, 805 N.E.2d at 787. We disagree. Given the facially-apparent sentencing error, the trial court’s consideration of the certified driving record and/or case file was wholly unnecessary and cannot be said to have been required for the consideration of the State’s claim of sentencing error. The State’s use of the statutory motion to correct erroneous sentence herein was not inappropriate.