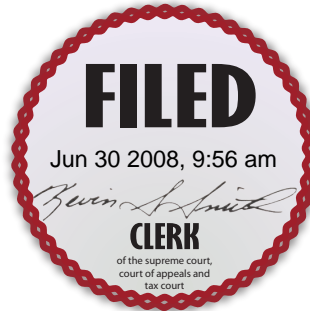


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TRISHA ALLEN, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 54A01-0803-CR-139  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MONTGOMERY CIRCUIT COURT  
The Honorable Thomas K. Milligan, Judge  
Cause No. 54C01-0004-CF-52  
54C01-0710-DF-146

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**June 30, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Trisha Allen appeals the trial court's denial of her motion to correct erroneous sentence. We affirm.

### **Issues**

Two issues are raised in this appeal, which we restate as follows:

- I. whether Allen used the proper motion to challenge the validity of her sentence; and
- II. whether the trial court erred in denying her motion to correct erroneous sentence.

### **Facts**

The State filed charges against Allen for maintaining a common nuisance in the Montgomery Circuit Court. In the same court, but in another case, the State filed an allegation against Allen that she violated the terms of a community corrections placement. The State also filed charges against Allen in the Montgomery Superior Court for class D felony non-support of a dependent. Allen entered into the following plea agreement with the State on November 16, 2007:

If the defendant enters a guilty plea to maintaining a common nuisance, a class D felony in 54C01-0710-FD-146 and admits her community corrections violation in 54C01-0004-CF-52 and enters her plea of guilty to count II- non-support, a class D felony in 54D02-0702-FD-84, then the parties agree that the matter of sentence in 54C01-0710-FD-146 shall be determined by the court. The State will recommend work release placement if defendant is eligible for such placement with regard to the community corrections violation in 54C01-0004-CF-52, the defendant shall have her community corrections placement revoked and the defendant shall serve the balance of her sentence (on work release if eligible) and a judgment in the amount of \$2,204.00 shall be entered in favor

of west central regional community corrections for past due and owing electronic monitoring fees. With regard to the sentence in 54D02-0702FD-84, the duration of the sentence shall be determined by the court. The executed portion of any sentence initially imposed shall not exceed 180 days. The sentences imposed in all these causes shall be served consecutive to one another.

App. p. 230-31.

Allen's plea and sentencing hearing for cause numbers 54C01-0004-CF-52 and 54C01-0710-FD-146, was held on January 4, 2008. At the hearing the court reviewed the terms of the plea agreement with Allen, and Allen stated she understood and was satisfied with the terms. The defense attorney proposed the following sentence:

Specifically we would propose that in FD-146 that she receive a sentence of two years within the Department of Correction. In CF-52 that she serve the balance of that sentence and we calculate that out to be about a hundred and forty-five actual days in Montgomery County Jail on work release and the remaining year be placed on probation under the terms and conditions to be left to the sound discretion of the court. We would ask for a year of probation so that she would not have the fees incumbent with Community Corrections and Work Release so that she could have a better opportunity to make a quicker pay down of the fess and support arrearages that exist.

Tr. p. 24-25.

At the hearing, the trial court ordered Allen to serve 262 days on work release for her community corrections violation in CF-52. The court also ordered Allen to serve thirty-six months for the FD-146 offense. The sentences were to be served consecutively. The FD-84 sentence was to be left up to the Montgomery Superior Court.

Allen later wrote a letter to the court, stating that she was under the impression all the sentences were capped at 180 days, and that the court's sentencing did not comport with the plea agreement. The matter was heard on February 8, 2008. The following dialogue took place:

Court: Allen, do you have anything that you'd like to say in addition to what you wrote here in your letter?

Allen: No, just that on the second page it does say the executed portion of any sentence initially imposed shall not exceed a hundred and eighty days. The sentences in these cases should be run consecutive which I understood all that, but I was just making sure that it was known to the court that the sentence was more than what [sic].

Id. at 29

The State argued that the 180-day limitation on the executed portion of any sentence applied to the FD-84 non-support count only. Allen's counsel declined to pursue the issue further, only commenting that he would not take a position that was adverse to his party. The court stated:

[T]he plea agreement says that the matter of sentence in 54-C01-0710-FD-146 shall be determined by the court. With regard to the Community Corrections violation in 54-C01-0004-CF-52 the defendant shall have her Community Corrections placement revoked and shall serve the balance of her sentence. There's nothing in either of those that refers to any cap. In the one case it's left up to the court. In the other the suspended sentence is revoked and she has to serve her time. The only way, the way the court reads this the only time that the cap comes into play is in regard to the sentence in 54-D02-0702-FD-84 and after that it say the duration of sentence to be determined by the court. The executed portion of any sentence initially imposed shall not exceed a hundred and eighty days. The court reads that to be a cap on the Superior two case only.

Id. at 31.

The trial court considered Allen's letter a motion to correct erroneous sentence, and it found that the sentencing order was consistent with the plea agreement. Allen now appeals her sentences from CF-52 and FD-146.

## **Analysis**

### ***I. Motion to Correct Erroneous Sentence***

The State argues that Allen used an improper motion to challenge the validity of her sentence under the terms of her plea agreement. We agree.

A motion to correct erroneous sentence is only appropriate when the sentence is erroneous on its face. Robinson v. State, 805 N.E.2d 783, 786 (Ind. 2004). What that means is that the statutory motion can only be used to correct a sentence when the errors are obvious from the face of the judgment in light of the statutory authority, without reference to other matters in or extrinsic to the record. Id. at 787-88. The reason why the use of this motion is so narrowly construed is because there are other, broader, vehicles to bring this type of action, such as direct appeal or post-conviction proceedings. Id. at 787.

The sentencing judgment was not facially erroneous in light of statutory authority. To the extent that Allen claims she misunderstood the plea agreement, that is clearly an issue outside the face of the sentencing judgment that ought to be addressed through post-conviction proceedings. Id. at 786.

### ***II. Merits of Sentencing Claim***

Even if Allen were to successfully jump the procedural hurdle of not using the proper motion to challenge the validity of her sentence, her sentence is not inconsistent with the plea agreement. Allen argues the terms of the plea agreement are ambiguous, and because of that, the trial court erred in denying her motion to correct erroneous sentence. We disagree.

Allen argues that strict adherence to the plea bargain is essential, and that plea agreements are controlled by principles of contract law. She relies on Wright v. State, 700 N.E.2d 1153, 115 (Ind. Ct. App. 1998), and states that ambiguity will be found in a contract if reasonable people would find the contract subject to more than one construction.

Allen entered into the plea agreement with the State. At the plea/sentencing hearing, she was asked by the court if she understood the plea agreement. She replied that she did. The State interpreted the terms of the agreement in a manner consistent with the trial court's sentencing. Allen's attorney understood the terms of the agreement in accordance with the State as evidenced from his proposed sentence, which exceeded 180 days; the agreement was interpreted in the same fashion by the trial court when the matter was heard in response to Allen's motion to correct erroneous sentence.

The State asserts that at the February hearing addressing Allen's motion to correct erroneous sentence Allen did not produce any evidence that she had been misadvised, and that because of this, the trial court properly determined it had sentenced Allen according to the intention of the parties. We agree. Allen had ample opportunity to inform the court she had been misadvised. At the sentencing hearing, Allen said nothing about her

sentence being inconsistent with the plea agreement. At the motion to correct erroneous sentence hearing, Allen said nothing in regards to being misadvised.

The trial court found that the 180-day limitation on the executed portion of any sentence applied to the FD-84 non-support count that was filed in Montgomery Superior Court. We agree with the trial court. The plea agreement's language is unambiguous.

### **Conclusion**

Allen did not use the proper procedural vehicle to litigate her cause of action. Even if she were able to avoid the strict limits of the motion to correct erroneous sentence, her sentence is still consistent with the plea agreement. We affirm the trial court.

Affirmed.

CRONE, J., and BRADFORD, J., concur.