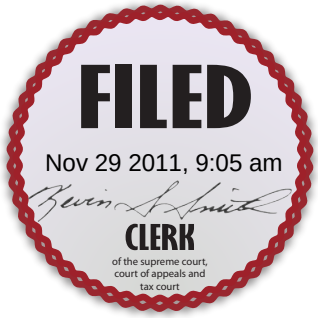

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IN THE
COURT OF APPEALS OF INDIANA

MARTIZE SEVION,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A05-1102-CR-125
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Thomas A. Cannon, Judge
Cause No. 18C05-0908-FB-11

November 29, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Martize Sevion (Sevion), appeals his sentence for two Counts of criminal confinement, Class B felonies, Ind. Code §§ 35-42-3-3(a)(1), (b)(2)(A); two Counts of intimidation, Class C felonies, I.C. § 35-45-2-1(a)(2), (b)(2); and one Count of pointing a firearm, a Class D felony, I.C. § 35-47-4-3(b).

We dismiss in part and affirm in part.

ISSUE

Sevion raises six issues on appeal, one of which we address and restate as: Whether the trial court properly denied his motion to correct erroneous sentence.

On Cross-Appeal, the State raises one issue, which we restate as: Whether Sevion's appeal on the merits of his conviction should be dismissed as untimely.

FACTS AND PROCEDURAL HISTORY

In the summer of 2008, Bryan Carrier (Carrier) and Angela Brotherton (Brotherton) were addicted to drugs, including cocaine, methadone, and opiates. Brotherton had a bad back and began taking medication for the pain; gradually, both she and Carrier became drug users. They would usually purchase drugs from Sevion, Mustafa Sevion (Mustafa), who was Sevion's brother, and Charles Bruce, a.k.a. Booboo. When Brotherton got arrested for shoplifting, she agreed to buy drugs from Mustafa as an undercover informant for the police department. As a result of Brotherton's undercover work, law enforcement officers arrested Mustafa on September 24, 2008.

The following day, September 25, 2008, Carrier and Brotherton took their daily doses of methadone. At approximately 8 p.m. that day, Carrier, Brotherton, and Sevion

got together at the Imperial Apartments on Mulberry Street, in Muncie, Indiana. Sevion, who was on the phone, met with Carrier, as Carrier drove up. Carrier could see Booboo, Marcel Sevion (Marcel), another of Sevion's brothers, and James Crawford (Crawford) standing around a makeshift campfire.

Sevion walked up to Carrier's truck and told him to get out of the car. Carrier and Sevion went in the alley, behind one of the apartment buildings. Sevion finished his phone call and told Carrier that he wanted to check him for a wire. Carrier lifted up his shirt. Seeing no wire, Sevion walked back to Carrier's truck to fetch Brotherton. As Sevion approached the truck, both Carrier and Brotherton noticed Sevion take something off the top of a blue car. Sevion told Brotherton, "[Carrier] wants you to come over here with us." (Transcript p. 236). Brotherton could see Carrier shake his head "no," but Brotherton nevertheless followed Sevion into the alley. (Tr. p. 236).

When Sevion stopped walking, he told them that he wanted to check them both for a wire and told them to take off their clothes. Brotherton asked why, to which Sevion replied "you know why." (Tr. p. 264). As Carrier became upset at Sevion forcing Brotherton to strip, Sevion showed them his semi-automatic handgun, pulling back the slide so a bullet fell out. Brotherton stripped down to her underpants and Carrier took off all his clothes.

Sevion told Brotherton and Carrier to follow him. Carrier demanded to know what Sevion was planning and whether he was going to kill them. Sevion instructed them to cooperate and to do as he ordered. Sevion led them out of the alley, back to the blue car. Booboo, Marcel, and Crawford gathered around them. Sevion ordered Carrier

and Brotherton to get into the trunk of the car. When Brotherton asked why, Sevion told her that he was "going to take [her] out in the country and kill [her]." (Tr. p. 240). When Carrier started to get into the trunk, Brotherton took off running. At that point, Carrier also started running toward a nearby field.

Terrified to be shot in the back, Brotherton ran into a nearby apartment. Jerome Barnes (Barnes), the apartment's tenant, saw her run screaming into his apartment, clad only in her underpants, while he sat outside eating popcorn. Noticing Barnes' cell phone on the coffee table, Brotherton grabbed it and barricaded herself in the bathroom where she dialed 9-1-1. Barnes followed her into his apartment, and Sevion followed as well. As Brotherton was talking to the 9-1-1 operator, she could feel Sevion pushing against the bathroom door. Sevion managed to open the door, grabbed Brotherton by hair and dragged her out, pointing a gun at her head. Barnes remained in his apartment.

Carrier was chased by Marcel. When Carrier was cornered against a fence, Marcel threatened to hit him and he lifted his shirt as if to indicate to Carrier that he was carrying a gun. Carrier was led back to the car where Booboo and Crawford were waiting. Carrier climbed into the trunk and the lid was closed. He managed to force the back seat down and stuck his head out. Booboo saw him and slammed the seat back, catching Carrier's head between the seat and the car frame.

Outside Barnes' apartment, Booboo grabbed Brotherton's hair from Sevion and yanked her around. From the trunk, Carrier heard Brotherton screaming. He managed to find the emergency release and popped the trunk open. Carrier jumped out of the trunk and started running down Mulberry Street. As the men's attention focused on Carrier,

Brotherton fled again. Booboo ran towards Carrier, wielding a beer bottle and hit Carrier directly above his right eye. As Carrier ran on, he encountered Muncie Police Officer Larry Ivy (Officer Ivy). Brotherton ran through the apartments again and also ran into Officer Ivy.

On October 10, 2008, the State filed an Information charging Sevion with one Count of armed robbery, a Class B felony, I.C. § 35-42-5-1; two Counts of criminal confinement, Class B felonies, I.C. §§ 35-42-3-3(a)(1), (b)(2)(A); three Counts of intimidation, Class C felonies, I.C. § 35-45-2-1(a)(2), (b)(2); and two Counts of pointing a firearm, a Class D felony, I.C. § 35-47-4-3(b) as well as an habitual offender Count, I.C. § 35-50-2-8. The State eventually dismissed the armed robbery Count.

On November 30, 2010, the trial court conducted a bench trial. On December 1, 2010, at the close of the evidence, the trial court found Sevion guilty of two Counts of criminal confinement, Class B felonies; two Counts of intimidation, Class C felonies; and one Count of pointing a firearm, a Class D felony. The trial court also adjudicated Sevion to be an habitual offender. On December 28, 2010, at the sentencing hearing, the trial court sentenced Sevion to fifteen years each on his criminal confinement convictions, to be served consecutively, and attached an additional twenty years for the habitual offender adjudication. Additionally, the trial court sentenced Sevion to six years for both Counts of intimidation and two years for his conviction to point a firearm, to be served concurrently with the other sentences for an aggregate executed sentence of fifty years.

On December 29, 2010, Sevion filed his motion to correct erroneous sentence, which was denied by the trial court on February 16, 2011. Two days later, on February 18, 2011, Sevion filed his notice of appeal.

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

DISCUSSION AND DECISION

CROSS APPEAL

Because the State presents this court with a threshold procedural question, we will address its cross-appeal before proceeding to Sevion's claims. In its cross-appeal, the State asserts that we lack jurisdiction to address the merits of Sevion's conviction due to his failure to timely file either a notice of appeal or a motion to correct error.

Indiana Appellate Rule 9 provides that a timely notice of appeal must be filed within thirty days following the entry of final judgment. However, if the party decides to file a motion to correct error, then a notice of appeal must be filed within thirty days of the trial court's ruling on the motion. Unless the notice of appeal is timely filed, the right to appeal shall be forfeited, except as provided by Post-Conviction Rule 2. *See* Appellate Rule 9(A)(5).

Sevion was found guilty on December 1, 2010 and the trial court sentenced him on December 28, 2010. The following day, on December 29, 2010, Sevion filed his motion to correct erroneous sentence, which the trial court subsequently denied on February 16, 2011. Sevion filed his notice of appeal on February 18, 2011.

Pursuant to Indiana Appellate Rule 9, Sevion's final day to file his notice to appeal his conviction and sentence was January 28, 2011. Instead of filing a timely notice of

appeal, Sevion filed a motion to correct erroneous sentence. Our supreme court discussed the legal significance of a motion to correct erroneous sentence at length in *Robinson v. State*, 805 N.E.2d 783 (Ind. 2004). In *Robinson*, our supreme court noted that a motion to correct sentence derives from Indiana Code section 35-38-1-15 and its purpose is to provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence. *Id*. at 785. Such a motion may only be used to correct erroneous sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. *Id*. at 787. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence. *Id*. at 787. The *Robinson* court clarified that

> [w]hen an error related to sentencing occurs, it is in the best interest of all concerned that it be immediately discovered and corrected. Other than an immediate motion to correct sentence, such errors are best presented to the trial court by the optional motion to correct error under Indiana Trial Rule 59, or upon direct appeal from the final judgment of the trial court pursuant to Indiana Appellate Rule 9(A).

Id. at 786. As such, the supreme court characterized a motion to correct erroneous sentence as "an alternate remedy" because it is only available when the sentence is erroneous on its face. *Id*. A trial court's ruling on a motion to correct sentence is subject to appeal by normal appellate procedures. *Id*.

It is clear from the motion's very limited purpose that it cannot be used as a vehicle to circumvent the statutory time to appeal a final decision, nor does the motion toll the time to file a timely notice of appeal. An appeal from the denial of a motion to

correct erroneous sentence is only an appeal from the trial court's decision with respect to the perceived erroneous sentence, and it cannot incorporate an appeal on the underlying merits of the conviction. Therefore, we conclude that Sevion's appellate claims addressing the merits of his conviction must be dismissed due to Sevion's untimely appeal.

APPEAL

Turning to Sevion's appeal, we will address his claim that the trial court improperly denied his motion to correct his erroneous sentence. When reviewing a trial court's ruling on a motion to correct sentence, we defer to the trial court's factual findings and review its decision only for an abuse of discretion. *Newson v. State*, 851 N.E.2d 1287, 1289 (Ind. Ct. App. 2006). We review its legal conclusions *de novo*. *Id.*

As stated above, a motion to correct erroneous sentence is available only in a limited situation and its use should be narrowly confined to claims apparent from the face of the sentencing judgment. *Robinson*, 805 N.E.2d at 787. This facially erroneous prerequisite has to be strictly applied. *Id.* Therefore, a motion to correct erroneous sentence can only be expeditiously considered when it presents a claim that may be resolved by considering only the face of the judgment and the applicable statutory authority without reference to other matters in or extrinsic to the record. *Id*. at 787-788.

In his motion, Sevion contends that his sentence is erroneous because

> Counts 2 and 3 of the Charging Information cite I.C. § 35-42-3-3(a)(1), a subsection that defines Confinement as a Class D felony, and Counts 5 and 6 cite I.C. § 35-45-2-1(a)(1), a subsection that defines Intimidation as a Class A misdemeanor. The trial court erred in denying Sevion's Motion to

> Correct Erroneous Sentence where Sevion was sentenced for Confinement as Class C felonies and Intimidation as Class D felonies.

(Appellant's Br. p. 20). In other words, Sevion alleges that the charging Information was incorrect and misleading. In additional support, he references the Chronological Case Summary and the evidence presented by the State at trial.

Mindful of our supreme court's premise that the motion to correct erroneous sentence be strictly applied, we cannot address Sevion's claim. His allegation would require us to look at the proceedings before and during trial and to consider matters in the record; his contention cannot be resolved merely from analyzing the face of the judgment. *See Robinson*, 805 N.E.2d at 787. Sevion's argument would be more properly addressed through a timely direct appeal on the merits or by way of a motion to correct error. We affirm the trial court's denial of his motion.

CONCLUSION

Based on the foregoing, we conclude that Sevion's claims with respect to the merits of his conviction were not timely filed and are therefore dismissed. In addition, we affirm the trial court's denial of Sevion's motion to correct erroneous sentence.

Dismissed in part and affirmed in part.

NAJAM, J. and MAY, J. concur