## MEMORANDUM DECISION





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# IN THE COURT OF APPEALS OF INDIANA

Paul D. Vaughn,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

October 13, 2023

Court of Appeals Case No. 22A-CR-3009

Appeal from the Delaware Circuit Court

The Honorable Linda Ralu Wolf, Judge

Trial Court Cause Nos. 18C03-1601-F6-42 & 18C03-2005-F6-345

**Memorandum Decision by Judge Riley**
Judges Crone and Mathias concur.

**Riley, Judge.**

## STATEMENT OF THE CASE

[1] Appellant-Defendant, Paul Vaughn (Vaughn), appeals following the denial of his motion to correct erroneous sentence.

[2] We affirm.

## ISSUE

[3] Vaughn presents this court with two issues. However, the State presents an issue which we find to be dispositive and which we restate as: Whether the trial court abused its discretion in denying Vaughn's motion to correct erroneous sentence.

## FACTS AND PROCEDURAL HISTORY

[4] On January 25, 2016, the State filed an Information under Cause Number 18C03-1601-F6-42 (F6-42), charging Vaughn with Level 6 felony theft. On May 21, 2020, the State filed an Information under Cause Number 18C03-2005-F6-345 (F6-345), charging Vaughn with Level 6 felony check fraud. On February 3, 2022, the parties entered into a plea agreement that provided that Vaughn would plead guilty to the charges and that sentencing would be left to the discretion of the trial court "with the exception that any executed portion to the Department of Correction or Electronic Home Detention be capped at a period of three (3) years, in the aggregate for both causes of action." (Appellant's App. Vol. II, p. 25). Regarding F6-42, Vaughn's plea agreement provided that he would make restitution to the victims "in the amount of $20,900.00, per separate Restitution Order" and that "[r]estitution shall be paid

by [Vaughn] to the Clerk of the Delaware County Circuit Court for disbursement." (Appellant's App. Vol. II, p. 25). The plea agreement contained an identical restitution provision pertaining to F6-345, except that the identity of the victim was changed and the amount of the restitution to be paid was $3,056.44. Vaughn's plea agreement further provided that Vaughn "hereby waives any and all appellate review of a sentence imposed by the [c]ourt that is consistent with the terms of this Plea Agreement[,]" including "challenges for abuse of discretion, challenges to the [t]rial [c]ourt's sentencing statement, and challenges to the appropriateness of the sentence pursuant to Indiana Appellate Rule 7(B)." (Appellant's App. Vol. II, p. 26).

[5] On May 5, 2022, the trial court accepted Vaughn's guilty plea and sentenced him to consecutive terms of thirty months in each cause, with eighteen months executed and twelve months suspended to supervised probation on each sentence. The trial court further ordered that, as a condition of his supervised probation, Vaughn was to pay restitution in the amounts agreed upon in his plea agreement. On June 8, 2022, the trial court issued its restitution orders directing that Vaughn was to pay restitution in the amounts specified in his plea agreement as a condition of his supervised probation.

[6] Vaughn did not file a direct appeal following his sentencing hearing. On November 6, 2022, Vaughn filed a pro se motion to correct erroneous sentence in which he argued that (1) the trial court abused its discretion by failing to comply with the restitution statute's requirement to "hold a hearing" to inquire into his ability to pay restitution and to set the manner of payment; (2) that the

trial court's restitution orders contravened the terms of his plea agreement by making his payment of restitution a condition of his probation, as opposed to a separate order; and (3) that his counsel should have objected to the trial court's sentencing and restitution orders. (Appellant's App. Vol. II, p. 93). On November 21, 2022, the trial court summarily denied Vaughn's motion.

[7] On May 9, 2023, Vaughn filed his appellate brief. On June 2, 2023, the State filed a motion to dismiss Vaughn's appeal. On July 7, 2023, the motions panel of this court ordered the Clerk of Courts to file Vaughn's response to the State's motion to dismiss, and the motions panel ordered the matter to be held in abeyance to be addressed by the writing panel assigned to the instant appeal.[1]

[8] Vaughn now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

[9] Vaughn appeals following the denial of his pro se motion to correct erroneous sentence in which he argued that the trial court abused its discretion by failing to hold a hearing on his ability to pay restitution and to set the manner of his repayment; that the restitution orders were outside the terms of his plea

[1] We deny the State's motion to dismiss. It is not necessary for us to address the State's argument that Vaughn waived his right to appeal his sentence through the provisions of his plea agreement, as we consider the merits of the State's contention that a motion to correct erroneous sentence is an improper vehicle for raising the claims Vaughn presented in his motion. When, as here, we conclude that a trial court has properly denied a motion to correct erroneous sentence, the result is the affirmance of the trial court's decision, not the dismissal of the appeal. *See*, *e.g.*, *Hobbs v. State,* 71 N.E.3d 46, 49-50 (Ind. Ct. App. 2017) (affirming the trial court's denial of Hobbs' motion to correct erroneous sentence, where his claims required consideration of matters outside of the face of the trial court's sentencing order), *trans. denied*.

agreement; and that his counsel should have objected to the trial court's restitution orders sooner. However, in its motion to dismiss and in its appellee's brief, the State argues that the trial court properly denied Vaughn's motion to correct erroneous sentence because he did not demonstrate that the trial court's sentencing and restitution orders were facially erroneous. We agree.

[10] Pursuant to Indiana Code section 35-38-1-15, a defendant may seek to correct an erroneous sentence as follows:

> If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

[11] The purpose of a motion to correct erroneous sentence is to "provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence." *Godby v. State*, 976 N.E.2d 1235, 1236 (Ind. Ct. App. 2012). A motion to correct erroneous sentence may only be used to correct sentencing errors that are clear from the face of the sentencing judgment in light of statutory authority. *Robinson v. State*, 805 N.E.2d 783, 787 (Ind. 2004). Claims that require consideration of the proceedings before, during, or after trial may not be presented in a motion to correct erroneous sentence. *Id.* "Such claims may be raised only on direct appeal, and, where appropriate, by

post-conviction proceedings." *Id*. We generally review a trial court's denial of a motion to correct erroneous sentence for an abuse of the trial court's discretion. *Bonds v. State*, 165 N.E.3d 1011, 1012 (Ind. Ct. App. 2021).

[12] Indiana Code section 35-38-2-2.3(a)(6) provides that when, as here, restitution is ordered as a condition of probation, "the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance." Vaugh's claim that the trial court failed to hold a hearing to inquire into his ability to pay and to fix the manner of payment is not an issue which can be discerned from the face of the sentencing and restitution orders themselves; rather, it requires consideration of the chronological case summary and the transcript of Vaughn's sentencing hearing.[2] Similarly, Vaughn's claim that the trial court's restitution orders contravened the terms of his plea agreement plainly entails an examination of his plea agreement, a document that is extrinsic to the sentencing and restitution orders. Lastly, Vaughn's argument that his counsel should have objected earlier to the trial court's judgments does not implicate the trial court's sentencing and restitution orders at all, let alone show that those orders are facially erroneous.

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[2] In addition, we observe that, under the restitution statute, the trial court is not required to hold a hearing on these matters prior to entering a restitution order. *See Dull v. State*, 44 N.E.3d 823, 829-30 (Ind. Ct. App. 2015) (holding that the restitution statute does not require a trial court to hold a hearing on the defendant's ability to pay and that the trial court may make the proper inquiry, depending on the circumstances, by reviewing the presentence investigation report and questioning witnesses).

[13] None of these claims could be properly addressed through a motion to correct erroneous sentence, as their resolution entailed consideration of matters outside of the sentencing judgment and applicable statutory authority.[3] *See Robinson*, 805 N.E.2d at 787. On appeal, Vaughn does not acknowledge the procedural posture of his case. Accordingly, the trial court did not abuse its discretion in summarily denying Vaughn's motion. *See id*.

## CONCLUSION

[14] Based on the foregoing, we hold that the trial court did not abuse its discretion when it denied Vaughn's motion to correct erroneous sentence.

[15] Affirmed.

[16] Crone, J. and Mathias, J. concur

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[3] In response to the State's motion to dismiss his appeal, Vaughn raised a slightly different claim pertaining to the trial court's adherence to the restitution statute, in that he argues that "the sentencing order in this case is facially erroneous in that it fails to include any findings that [Vaughn] had the ability to pay restitution, nor did it include the method of satisfying the restitution payments as required under Ind. Code § 35-38-2-2.3(a)(6)." (Response to Motion to Dismiss Appeal, pp. 2-3). This argument is waived for our consideration, as it was not raised in Vaughn's motion to correct erroneous sentence. *State v. Allen*, 187 N.E.3d 221, 228 (Ind. Ct. App. 2022) (observing that arguments raised for the first time on appeal are waived), *trans. denied*. Vaugh did not raise this claim in his appellate brief either.