

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Richard Dale Talbott,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 19, 2024

Court of Appeals Case No.
23A-CR-2523

Appeal from the Jefferson Circuit Court
The Honorable Donald J. Mote, Judge

Trial Court Cause No.
39C01-1910-F3-1289

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

- [1] Richard Dale Talbott, pro se, appeals the denial of his motion to correct erroneous sentence. We affirm.

Facts and Procedural History

- [2] Talbott began dating P.D. in the summer of 2019 and moved into her home that October. Later that month, Talbott argued with P.D. and told her that he was going to move out. He grabbed her throat, pushed her to the floor, slapped her face, smashed her head against the floor and a wooden box, and choked her until she lost consciousness.
- [3] The State alleged that Talbott committed criminal confinement as a level 3 felony, in that he knowingly or intentionally confined P.D. without her consent, “said act resulting in serious bodily injury, to wit applied pressure to the throat or neck of [P.D.] in a manner that impeded her normal breathing or blood circulation, which created a substantial risk of death” to P.D. *See* Appellant’s App. Vol. 2 at 114 (charging information);¹ *see also* Ind. Code § 35-42-3-3(a) (“A person who knowingly or intentionally confines another person without the other person’s consent commits criminal confinement. *Except as provided in subsection (b)*, the offense of criminal confinement is a Level 6 felony.”)

¹ We cite to Talbott’s appellant’s appendix using its PDF pagination.

(emphasis added); Ind. Code § 35-42-3-3(b)(3)(B) (providing that criminal confinement is a level 3 felony if it “results in serious bodily injury to a person other than the confining person”); Ind. Code § 35-31.5-2-292 (defining “serious bodily injury” in pertinent part as “bodily injury that creates a substantial risk of death”). The State also alleged that Talbott committed level 3 felony aggravated battery, level 6 felony domestic battery, level 6 felony strangulation (“in a rude, insolent or angry manner, did knowingly or intentionally apply pressure to the throat or neck of [P.D.] in a manner that impeded [her] normal breathing or blood circulation”), Appellant’s App. Vol. 2 at 118, and three counts of level 6 felony intimidation. The State later added an attempted murder charge and a habitual offender allegation.

[4] Talbott represented himself at his October 2021 jury trial. The jury found him guilty of level 3 felony criminal confinement, level 3 felony aggravated battery, class A misdemeanor domestic battery, and level 6 felony strangulation, *see id.* at 61 (chronological case summary), and the trial court entered judgment of conviction on those counts. The jury acquitted Talbott on the attempted murder and intimidation counts, and it found that he was a habitual offender. *Id.* at 61-62. At sentencing, the trial court vacated the aggravated battery and strangulation judgments “due to double jeopardy concerns[.]” *See id.* at 90 (sentencing order). The court imposed concurrent executed sentences of fourteen years on the level 3 felony criminal confinement conviction and 365 days on the class A misdemeanor battery conviction. *Id.* at 92. The court enhanced the criminal confinement sentence by seventeen years based on the

habitual offender adjudication, for an aggregate sentence of thirty-one years executed. *Id.* Talbott filed a direct appeal by counsel, which was unsuccessful. *Talbott v. State*, 204 N.E.3d 288 (Ind. Ct. App. 2023), *trans. denied*.

- [5] In September 2023, Talbott filed a pro se motion to correct erroneous sentence pursuant to Indiana Code Section 35-38-1-15. Talbott asserted that the sentence imposed on the level 3 felony criminal confinement count “exceeds the statutory maximum authorized for” that offense, Appellant’s App. Vol. 2 at 88, apparently based on his mistaken belief that he was charged with and convicted of the level 6 felony version of the offense. *See* Ind. Code § 35-50-2-5(b) (providing that sentencing range for level 3 felony is between three and sixteen years); Ind. Code § 35-50-2-7(b) (providing that sentencing range for level 6 felony is between six months and two and a half years).² In October 2023, the trial court denied Talbott’s motion. Talbott now appeals.

Discussion and Decision

- [6] A motion to correct erroneous sentence “is appropriate only when the sentence is ‘erroneous on its face.’” *Robinson v. State*, 805 N.E.2d 783, 786 (Ind. 2004) (quoting *Mitchell v. State*, 726 N.E.2d 1228, 1243 (Ind. 2000)). Thus,

a motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. Claims

² We can only surmise that Talbott’s misunderstanding is based on the charging information’s citation to both Indiana Code Section 35-42-3-3(a) and -(b)(3)(B). Appellant’s App. Vol. 2 at 114. The information unequivocally states that the charge is a level 3 felony and includes the relevant allegations for that crime. *Id.*

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. “A sentence is defective on its face ‘if it violates express statutory authority at the time the sentence is pronounced, as when the sentence falls outside the statutory parameters for the particular offense or is based on an erroneous interpretation of a penalty provision.’” *Woodcox v. State*, 30 N.E.3d 748, 751 (Ind. Ct. App. 2015) (quoting *Pettiford v. State*, 808 N.E.2d 134, 136 (Ind. Ct. App. 2004)). We review a trial court’s ruling on a motion to correct erroneous sentence for an abuse of discretion, which occurs if the decision is against the logic and effect of the relevant facts and circumstances before the court. *Id.* at 750.

[7] As demonstrated above, Talbott was charged with and convicted of level 3 felony criminal confinement, and his sentence falls within the statutory parameters for that offense. So, too, does his habitual offender enhancement. *See* Ind. Code § 35-50-2-8(i) (2019) (providing that “court shall sentence a person found to be a habitual offender to an additional fixed term that is between ... six (6) years and twenty (20) years, for a person convicted of ... a Level 1 through Level 4 felony”). Accordingly, we conclude that the trial court

did not abuse its discretion in denying Talbott’s motion to correct erroneous sentence.³

[8] Affirmed.

Bailey, J., and Pyle, J., concur.

APPELLANT PRO SE

Richard D. Talbott
Miami Correctional Facility
Bunker Hill, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Caroline G. Templeton
Supervising Deputy Attorney General
Indianapolis, Indiana

³ In his appellate brief, Talbott raises an argument that he did not make in his motion to correct erroneous sentence: that the trial court “lacked statutory authority to impose any sentence” on the criminal confinement conviction because it is an included offense of the vacated strangulation conviction. Appellant’s Br. at 2. We agree with the State that this argument is waived and that, in any event, “a claim that one offense is included in another is not properly reviewed in a motion to correct erroneous sentence because it requires consideration of materials outside the face of the sentencing judgment.” Appellee’s Br. at 10.