

STATEMENT OF THE CASE

William O. Herman brings this *pro se* appeal of the trial court's denial of his motion to correct erroneous sentence.

We affirm.

ISSUE

Whether the trial court erred in denying Herman's motion.

FACTS

On March 18, 2005, Herman filed a *pro se* motion for correction of erroneous sentence with the trial court. He appeals the denial of that motion.

Our rules require that the appellant's Appendix contain information from the trial court's record "important to a consideration of the issues raised on appeal." Ind. Appellate Rule 50(B(1)(c)). As information important to Herman's issue, his Appendix contains only the CCS, Herman's *pro se* motion, and the minute entry denying his motion. Therefore, for the background to this appeal, we turn to previous opinions. According to *Herman v. State*, 271 Ind. 680, 395 N.E.2d 249 (1979), Herman was initially charged with two counts of first degree murder. On December 5, 1974, he pleaded guilty to "two counts of second degree murder," after "admit[ting] in open court that he did kill both of the victims." *Id.* at 250, 251. Herman's admission "when he entered his guilty pleas that he did, in fact, stab the two victims, and that he intended to kill them when he did so," was "clear evidence that [Herman] had caused the death of two people by repeatedly stabbing them with a knife." *Id.* at 252-53. On January 16, 1975, Herman was sentenced to two life terms. *Id.* at 250.

In the mid 1970s, Herman filed his first petition for post-conviction relief. As amended, his petition argued *inter alia* sentencing errors by the trial court. Indiana's Supreme Court affirmed the trial court's denial of relief. In 1984, Herman filed a second petition for post-conviction relief. After the trial court denied Herman's second petition for post-conviction relief, our Supreme Court also affirmed that denial. *See Herman v. State*, 526 N.E.2d 1183 (Ind. 1988).

Subsequent to Herman's filing of his brief with this court arguing trial court error in the denial of his motion to correct erroneous sentence, the State moved to dismiss his appeal. As the State correctly noted, Herman had not been granted permission to file a successive post-conviction relief petition. *See* Ind. Post-conviction Rule 1(12). After a review by the motions panel of this court, we denied the State's petition but limited Herman's appeal to that portion of his brief that arguably contained "a facial challenge to his sentence, i.e., that he was improperly sentence[d] . . . in violation of the sentencing statutes in place at the time of the commission of the crimes." (Order May 26, 2006).

DECISION

A motion to correct erroneous sentence is a statutory remedy that provides prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence. *Robinson v. State*, 805 N.E.2d 783, 785 (Ind. 2004) (citing *Gaddie v. State*, 566 N.E.2d 535, 537 (Ind. 1991)). It is "appropriate only when the sentence is erroneous on its face." *Robinson* at 787 (citation omitted). This statutory remedy is not available when the claim requires consideration of "matters outside the face of the sentencing judgment" or "proceedings before, during or after trial." *Id.* For sentencing

claims that are “not facially apparent, the motion to correct sentence is an improper remedy”; such claims “may be raised only on direct appeal and, where appropriate, by post-conviction proceedings.” *Id.*

Herman argues that the trial court erred when it imposed two life sentences because his crimes were part of one “episode of criminal conduct” as defined by Indiana Code section 35-50-1-2.¹ Therefore, his argument continues, Indiana Code section 35-50-1-2(c) and common law require that “only one sentence maybe [sic] imposed.” Herman’s Br. 4. We disagree.

The original predecessor to Indiana Code section 35-50-1-2 was enacted in Acts 1976, P.L. 148 section 8, and it became effective July 1, 1977. *See Id.* at § 28. Thus, it was not in effect at the time of Herman’s sentencing.²

As common law authority for his argued “one sentence” limitation, Herman cites to *Bond v. State*, 273 Ind. 233, 403 N.E.2d 812 (1980), and *Bean v. State*, 267 Ind. 528, 371 N.E.2d 713 (1978). *Bond* observed that the defendant could “not be sentenced to life imprisonment upon both his conviction for murder in the first degree and his conviction

¹ Current Indiana Code section 35-50-1-2(c) provides that “except for crimes of violence, the total of the consecutive terms of imprisonment . . . to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed” certain aggregate sentence limitations.

² Herman argues that the “intent” of the statute is evidenced by the definition of an “episode of criminal conduct” being enacted in 1995. This definition did not come into existence until 1995. Further, the definition was in a provision that replaced the previous statutory limit on sentencing “except for murder.” *See* P.L. 304-1995. Even the pre-1995 limitation “except for murder” provision would not apply to Herman’s sentence for two counts of aggravated murder. Similarly, the 1995 statute excepts a “crime of violence” from the limitation applicable to sentencing on offenses which arose out of an episode of criminal conduct. Murder is expressly included in the statutory provision as a crime of violence. *See* I.C. § 35-50-1-2(a)(1). Because Herman’s crimes were murder, i.e., crimes of violence, the “episode of criminal conduct” limitation would likewise not apply under the new statute.

for killing a human being while perpetrating or attempting to perpetrate a kidnapping, *said homicides being of one and the same person.*” 403 N.E.2d at 819 (emphasis added). Because Herman received two life sentences for the killing of two separate victims, *Bond* is inapposite. Similarly, the *Bean* court stated that a defendant could not “be punished twice for one murder.” 371 N.E.2d at 716. Herman committed two murders; thus, *Bean* is inapposite.

The balance of Herman’s appellate arguments – that mitigating factors were overlooked, and that counsel was ineffective – “require consideration of matters outside the face of the sentencing judgment.” *Robinson*, 805 N.E.2d at 787. Therefore, the motion to correct sentence is improper to press such claims. *Id.*

The trial court did not err in denying Herman’s motion for correction of sentence.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.