

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.

APPELLANT PRO SE:

DON E. TIFFIN, JR.
Michigan City, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DON E. TIFFIN, JR.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 23A05-0610-CR-622
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE FOUNTAIN CIRCUIT COURT
The Honorable Susan Orr Henderson, Judge
Cause No. 23C01-9810-CF-410

November 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Don E. Tiffin, Jr., appeals the denial of his motion to correct erroneous sentence.

Because the trial court erroneously ordered the habitual offender enhancement served “consecutive” to the sentence for the underlying crime, we remand for entry of a corrected sentencing order. In all other respects, we affirm.

FACTS AND PROCEDURAL HISTORY

On October 8, 1999, a jury found Tiffin guilty of armed robbery as a Class B felony and found he was an habitual offender. The court sentenced Tiffin to twenty years for the robbery conviction and to thirty years for the habitual offender finding. The court ordered the “sentence is to run consecutive for a total of 50 years.” (App. at 10.)¹

On December 15, 2005, Tiffin filed a motion to correct erroneous sentence. The court denied that motion without a hearing on February 15, 2006.

DISCUSSION AND DECISION

A motion to correct erroneous sentence is derived from Indiana Code § 35-38-1-15, which explains erroneous sentences are not void, but rather must be corrected. The statute 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). Such motions are appropriate only when a sentence is “erroneous on its face.” *Id.* at 786. “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.

Tiffin asserts the court erred by ordering his habitual offender sentence served consecutive to the robbery sentence. We agree.

¹ Tiffin included an Appendix at the back of each copy of his Appellant’s Brief. We admonish Tiffin to file appendices bound separately from briefs in any future pleadings to this court. *See* Ind. Appellate Rule 50(D) (“All Appendices shall be bound separately from the brief.”). Tiffin’s Appendix pages are numbered separately from the pages of the brief, and we use the numbers provided by Tiffin.

In *Bennett v. State*, 470 N.E.2d 1344 (Ind. 1984), our Supreme Court explained:

By treating the habitual offender finding as a separate crime (count 6), the court's sentencing relative to appellant's habitual offender status is incorrect.

A sentence upon a finding of habitual criminality is not imposed as 'consecutive' to the sentence imposed for the underlying felony conviction. Such a finding is not a conviction of a separate crime, but rather provides for the enhancement of a sentence imposed under conviction for an underlying felony. In the instant case the correct sentencing should include the enhancement of one of the sentences imposed under the felony convictions.

Id. at 1346 (internal citations and quotations omitted). Tiffin was convicted of felony robbery and given a twenty-year sentence therefore. His thirty-year habitual offender enhancement should have been attached to that twenty-year sentence, for a total sentence of fifty years for robbery. We remand for the court to enter a sentencing order indicating Tiffin is to serve fifty years for robbery, because his underlying sentence was enhanced by thirty years for his being an habitual offender.

Tiffin's remaining claims, as best we understand them, are not available through a motion to correct erroneous sentence. He alleges the court had no subject matter jurisdiction because of an error in the charging information and because the State failed to file a jury demand. Because these claims would have required the trial court to consider the proceedings before Tiffin's trial, it could not address them on a motion to correct erroneous sentence. *See Robinson*, 805 N.E.2d at 787.

Accordingly, we remand for entry of a corrected sentencing order, but in all other respects, we affirm.

Affirmed in part; reversed and remanded in part.

DARDEN, J., and CRONE, J., concur.