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**IN THE
COURT OF APPEALS OF INDIANA**

DAVID L. STICKEL,)

Appellant-Defendant,)

vs.)

No. 71A04-0601-PC-17

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT

The Honorable W. M. Albright, Judge

Cause No. 71D02-0312-FD-1031

November 17, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

David L. Stickel, pro se, appeals from the trial court's denial of his pro se Motion to Correct Erroneous Sentence. We consolidate the issues presented by Stickel for review and restate them as a single issue, namely, whether the trial court erred in denying Stickel's motion.

We affirm.

FACTS AND PROCEDURAL HISTORY

On November 3, 2000, the St. Joseph Superior Court convicted Stickel of Operating a Vehicle While Intoxicated, as a Class D felony, under cause number 71D01-0003-DF-274 ("the 274 case"). The court sentenced Stickel to three years, with two years suspended. Subsequently, however, the court extended the probationary period of the 274 case until August of 2005. The unsuspended portion of that sentence allowed Stickel to serve home detention.

On December 9, 2003, the State charged Stickel with Operating a Vehicle While Suspended as an Habitual Offender, as a Class D felony, under cause number 71D02-031-FD-1031 ("the 1031 case"). Stickel pleaded guilty to that offense and, on April 21, 2004, the trial court sentenced him to three years. As with the 274 case, Stickler received two years suspended in the 1031 case. The trial court found eleven days jail credit served at the time of the sentencing for that case, and it ordered that the nonsuspended portion of the sentence be served as one-year daily reporting probation.

On October 18, 2004, Stickel's fiancée entered a hospital in critical condition due to cancer. In driving to the hospital, Stickel again operated a vehicle while intoxicated

(“the October offense”). Stickel was arrested and pleaded guilty. On May 24, 2005, the trial court sentenced him to thirty months imprisonment under cause number 71D08-0410-FC-376 (“the 376 case”).

On January 26, 2005, while Stickel was incarcerated pending sentencing in the 376 case, the probation department filed a probation violation report. In that report, the probation department stated that the October offense constituted a violation of the terms of probation issued in both the 274 case and the 1031 case and, as such, probations in those cases should be revoked. Stickel remained incarcerated pending the outcome of the probation revocation hearing.

On September 12, 2005, the trial court held the probation revocation hearing for both the 274 case and the 1031 case. At that hearing, Stickel’s trial counsel argued that Stickel had eleven days of jail time credit and 189 days of credit from home detention. After finding that Stickel had violated the terms of his probations, the trial court ordered the originally suspended sentences to be executed consecutively. The trial court ordered the Adult Probation Department to calculate Stickel’s appropriate credit time. After the Adult Probation Department reported back to the trial court, it entered “11 days Class 1 credit and 189 days not subject to day-for-day credit.” Appellant’s App. at 8. That statement was repeated verbatim in the 1031 case’s Abstract of Judgment (“the Abstract”). Afterward, the report of the Adult Probation Department listed the earliest possible release date for both the 274 case and the 1031 case as October 30, 2007.

Stickel subsequently filed a pro se motion for credit days in October of 2005, which the trial court denied. In December of 2005, Stickel filed a pro se Motion to

Correct Erroneous Sentence, which the trial court also denied. On January 18, 2006, the Indiana Department of Corrections informed Stickel by letter that his credit time had been calculated correctly. Stickel now appeals the trial court's denial of his Motion to Correct Erroneous Sentence.

DISCUSSION AND DECISION

Stickel filed a Motion to Correct Erroneous Sentence alleging that the trial court improperly sentenced him. Specifically, he contends that the trial court imposed an erroneous sentence because: (1) his sentence in the 1031 case is beyond the statutory maximum allowed for Class D felonies; (2) the trial court and Adult Probation Department improperly calculated his applicable credit time; and (3) the trial court, clerk of court, and various prison officials erred by not correcting the applicable credit time in relevant documents, most notably the Abstract. We cannot agree.

A trial court's ruling on a motion to correct an erroneous sentence is subject to appeal through normal appellate procedures. Strowmatt v. State, 779 N.E.2d 971, 975 (Ind. Ct. App. 2002). While a motion to correct an erroneous sentence is available as an alternate remedy to either post-conviction relief or a direct appeal, it is appropriate only when the sentence is erroneous on its face. Robinson v. State, 805 N.E.2d 783, 786-87 (Ind. 2004). When a claim of a sentencing error requires consideration of matters outside the face of the sentencing judgment, including "matters in . . . the record," it is best addressed promptly on direct appeal and thereafter, where applicable, via post-conviction relief proceedings. Id. at 788. "Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the

sentencing judgment, and the ‘facially erroneous’ prerequisite should . . . be strictly applied.” 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.

Here, Stickel first argues that his sentence was facially erroneous because it exceeded the statutory maximum for Class D felonies. Specifically, he asserts that the Abstract lists the start date of that sentence as January 26, 2006, with an earliest possible release date of October 30, 2007, and that this total amount of time, approximately twenty-two months, is beyond the purported eighteen month maximum allowed for Class D felonies. Stickel is mistaken. The Indiana Code allows a maximum sentence of three years for Class D felonies, which is greater than the sentence appearing in the Abstract. See Ind. Code § 35-50-2-7(a). Hence, Stickel’s sentence was not facially erroneous on this issue.

The rest of Stickel’s arguments require an examination of the record and are therefore inappropriate for our consideration. See Robinson, 805 N.E.2d at 786-88. Regarding credit time, the trial court’s sentencing statements indicate merely that it ordered the Adult Probation Department to calculate his appropriate credit time, and that, after the Adult Probation Department reported back to the trial court, it entered “11 days Class 1 credit and 189 days not subject to day-for-day credit.” Appellant’s App. at 8. That statement was repeated verbatim in the Abstract. Stickel’s challenge of that award of credit days requires an examination of the record regarding the days available for credit in the 1031 case and possibly the 274 case and 376 case. Such a review is extraneous to the trial court’s sentencing statements, however, and Stickel’s use of a

motion to correct erroneous sentence therefore was an improper procedural vehicle to raise those issues. Stickel should have directly appealed his sentence or filed a petition for post-conviction relief. In any event, the trial court did not err when it denied Stickel's motion to correct erroneous sentence.

Affirmed.

DARDEN, J., and FRIEDLANDER, J., concur.