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ATTORNEYS FOR APPELLEE:

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Attorney General of Indiana

**JUSTIN F. ROEBEL**  
Deputy Attorney General  
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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOHN AUTREY, )  
 )  
Appellant-Petitioner, )  
 )  
vs. ) No. 71A04-0701-PC-43  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Respondent. )

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable William T. Means, Judge  
Cause No. 71D04-9509-CF-426

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**December 13, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Judge**

John Autrey appeals the trial court's denial of his pro se motion to correct erroneous sentence. Autrey raises one issue, which we revise and restate as whether the trial court erred when it denied his motion to correct erroneous sentence. We affirm.

The relevant facts follow. On March 21, 1996, Autrey was convicted of murder for events that took place on September 9, 1995. The trial court sentenced him to fifty-five years in the Indiana Department of Correction, the presumptive sentence for murder on or after July 1, 1995.<sup>1</sup> The Indiana Supreme Court affirmed his conviction. See Autrey v. State, 700 N.E.2d 1140, 1142 (Ind. 1998). On June 5, 2006, Autrey filed a pro se motion to correct erroneous sentence, which the trial court denied without a hearing.

The sole issue is whether the trial court erred when it denied Autrey's pro se motion to correct erroneous sentence. Autrey argues that on "the date of the crime in this case, December 14, 1994, there were two sentencing statutes in effect" and that "the trial court sentenced [him] under the wrong one." Appellant's Brief at 5. A motion to correct erroneous sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of statutory authority. Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004). As to sentencing claims that require consideration of matters outside the face of the sentencing judgment, the motion to correct sentence is an improper remedy. Id. Such claims may be raised only on direct

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<sup>1</sup> Ind. Code § 35-50-2-3 (Supp. 1995) (subsequently amended by Pub. L. No. 117-2002, § 1 (eff. July 1, 2002); Pub. L. No. 71-2005, § 6 (eff. April 25, 2005)).

appeal and, where appropriate, by post conviction proceedings. Id. Here, the claimed error is not apparent on the face of the sentencing judgment, as it requires consideration of the date of the offense as well as which murder statute was in effect when Autrey committed it. Accordingly, Autrey may only raise this claim on direct appeal or by post conviction proceedings, and we cannot say that the trial court erred in denying his motion to correct erroneous sentence. See id.<sup>2</sup>

For the foregoing reasons, we affirm the trial court's denial of Autrey's motion to correct erroneous sentence.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur

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<sup>2</sup> We note that, contrary to his assertion on page 5 of his brief, Autrey committed the murder on September 9, 1995. See Autrey v. State, 700 N.E.2d 1140, 1142 (Ind. 1998). For murders committed between July 1, 1994 and May 5, 1995, there were two versions of Indiana Code § 35-50-2-3 on the books. Carter v. State, 686 N.E.2d 1254, 1262 (Ind. 1997). The Indiana Supreme Court concluded that, of the two versions, P.L. 158-1994, which provided a presumptive forty year sentence for murder subject to a twenty year enhancement, rather than P.L. 164-1994, which provided a presumptive fifty year sentence for murder subject to a ten year enhancement, applied to murders during this period. Id. at 1263 (citing Smith v. State, 675 N.E.2d 693, 697 (Ind. 1996)). P.L. 148-1995, which increased the presumptive sentence to fifty-five years, applied to murders committed on or after July 1, 1995, including the murder committed by Autrey. Although Autrey argues that he was entitled to a presumptive sentence of forty years, the presumptive sentence at the time of the offense was fifty-five years. Consequently, even if Autrey had properly presented his claim, his argument would fail.