ATTORNEY FOR APPELLANT:

CHARLES W. LAHEY
South Bend, 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

JAMES ALEXANDER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-0704-CR-231
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-9504-CF-158

November 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

James Alexander appeals from the trial court's grant of his motion to correct erroneous sentence. Alexander raises the sole issue of whether the trial court properly refused to re-consider the aggravating and mitigating factors in correcting his sentence. Concluding that the trial court acted properly, we affirm.

Facts and Procedural History

On January 17, 1996, following a jury trial, Alexander was found guilty of murder. On March 29, 1996, the trial court issued a sentencing order stating: "[T]he Court has given some thought to all the factors and the Court does believe that the presumptive sentence is appropriate in this case. The Court will impose a sentence of 50 years." Appellant's Appendix at 61. Alexander filed an appeal, arguing that he received ineffective assistance of counsel, and this court affirmed in an unpublished opinion, Alexander v. State, No. 71A05-9607-CR-276 (Ind. Ct. App., Feb. 18, 1998).

On February 5, 2007, Alexander filed a motion to correct erroneous sentence. On March 30, 2007, the trial court granted the motion and reduced Alexander's sentence to forty years. The basis for this reduction was that the actual presumptive sentence that applied to Alexander's case was forty years, not fifty years. See Smith v. State, 675 N.E.2d 693, 697 (Ind. 1996) (recognizing that between July 1, 1994, and May 5, 1995, conflicting sentencing statutes existed, and holding that for murders committed in this timeframe, the presumptive sentence is forty years). However, the trial court refused to reassess the aggravating and mitigating circumstances or to consider Alexander's behavior subsequent to his initial

sentencing hearing. Specifically, Alexander presented evidence that during his incarceration, he had earned a G.E.D., an Associate's Degree, a Bachelor's Degree, and certification in carpentry, and had participated in psychological treatment. Alexander now appeals, arguing that the trial court should have considered such circumstances, reweighed the aggravating and mitigating circumstances, and further reduced his sentence.

Discussion and Decision

Under Indiana Code section 35-38-1-15, which governs a motion to correct an erroneous sentence,

> If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

A defendant may use this procedure only "to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority." Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004). On the other hand, "[c]onstitutional issues or issues concerning how the trial court weighed factors in imposing a sentence are not matters which should be addressed in a motion to correct an erroneous sentence." Watkins v. State, 588 N.E.2d 1342, 1344 (Ind. Ct. App. 1992), superceded by statute on other grounds, Ind. Code § 35-50-1-2. A defendant attacking his sentence for any reason other than its facial invalidity must do so pursuant to a petition for post-conviction relief. Poore v. State, 613 N.E.2d 478, 480 (Ind. Ct. App. 1993). Because a motion to correct erroneous sentence is limited to alleging error on the sentence's face, this procedure may not be used "to present claims that

require resort to the record outside the sentencing judgment for resolution." Robinson, 805 N.E.2d at 787 n.3. As this court has noted, our supreme court's opinion in Robinson emphasizes "that the narrow confines of this procedure are to be strictly applied." Fulkrod v. State, 855 N.E.2d 1064, 1066 (Ind. Ct. App. 2006).

Since our supreme court's decision in Robinson, this court has repeatedly refused to address claims under a motion to correct erroneous sentence that require resort to materials outside the face of the sentencing judgment. See Fulkrod, 855 N.E.2d at 1067 (holding defendant could not use motion to correct erroneous sentence to raise Blakely claim); Murfitt v. State, 812 N.E.2d 809, 811 (Ind. Ct. App. 2004) (holding defendant could not use motion to correct erroneous sentence to claim that he was entitled to additional credit time); Hoggart v. State, 805 N.E.2d 1281, 1283-84 (Ind. Ct. App. 2004) (holding State could not use motion to correct erroneous sentence to claim trial court was required to order defendant's sentences to run consecutively because defendant was on bond when he committed the crimes where judgment did not indicate that defendant was on bond), clarified on reh'g, 810 N.E.2d 737, trans. denied.

Alexander cites Chism v. State, 807 N.E.2d 798 (Ind. Ct. App. 2004), for the proposition that trial courts have discretion when resentencing a defendant pursuant to a motion to correct erroneous sentence, and that such discretion includes the ability to reweigh the aggravating and mitigating circumstances and consider circumstances subsequent to the initial sentencing hearing. We find Chism wholly distinguishable, as it involved analysis pursuant to a petition for post-conviction relief. Id. at 801 ("[T]he second motion to correct

erroneous sentence on appeal today should be treated as a petition for post-conviction relief, not truly a motion to correct erroneous sentence."). Moreover, we have previously indicated that Indiana Code section 35-38-1-15 "clearly contemplates the correction of a sentence imposed erroneously at its inception. Therefore, only evidence reflecting the conditions as they existed as of the date of sentencing are [sic] properly considered." Edwards v. State, 518 N.E.2d 1137, 1141 (Ind. Ct. App. 1988), trans. denied; see also Ousley v. State, 807 N.E.2d 758, 760-61 (Ind. Ct. App. 2004) ("[B]ecause the error to be corrected when a motion to correct erroneous sentence is filed is an error apparent on the face of the judgment, the trial court need not look outside of the judgment itself and there is no reason to review evidence of subsequent behavior.").[1]

We conclude that the trial court properly refused to consider matters outside the face of the judgment imposing the sentence.[2]

Conclusion

We conclude the trial court properly refused to consider circumstances outside the face of the judgment, including events that transpired subsequent to the original sentencing hearing.

Affirmed.

KIRSCH, J., and BARNES, J., concur.

---

[1] We note that our supreme court's clarification of the circumstances under which a defendant may take advantage of a motion to correct erroneous sentence inherently renders all evidence reflecting conditions subsequent to the sentencing order off-limits, as such evidence cannot appear on the face of the judgment.

[2] Alexander also invokes the equal protection clause in arguing that the trial court improperly resentenced him. Our conclusion that the trial court was precluded from considering factors outside the face of the judgment renders discussion of this argument unnecessary.