

Comes now the State of Indiana by Brian D. Lucchi, Deputy Prosecuting Attorney for the 57th Indiana Judicial Circuit, and provides this memorandum in support of its motion to correct erroneous sentence under Indiana Code Section 35-38-1-15. *See Davis v. State*, 937 N.E.2d 8, 10 (Ind. Ct. App. 2010) (stating that the purpose of the motion to correct erroneous sentence statute is “to provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence”); *see also State v. Lotaki*, 4 N.E.3d 656, 658 (Ind. 2014) (affirming the holding in *Hardley v. State*, 905 N.E.2d 399, 402-03 (Ind. 2009), that the motion to correct erroneous sentence statute “empowers the State to challenge illegal sentences” because “sound policy and judicial economy favor permitting the State to present claims of illegal sentence on appeal when the issue is a pure question of law that does not require resort to any evidence outside the appellate record”).

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statutorily prescribed limits, and any sentence which is contrary to, or violative of, the penalty mandated by the applicable statute is an illegal sentence. *Ben-Yisrayl v. State*, 908 N.E.2d 1223, 1228 (Ind. Ct. App. 2009), *trans. denied*.

In the above-captioned cause, this Court sentenced the defendant to a period of two years in the Indiana Department of Correction for the Level 6 felony conviction with a two year enhancement for the defendant's status as a habitual offender, for an aggregate four-year executed sentence that was ordered served in Dubois County Community Corrections on Home Detention with GPS Monitoring under Indiana Code Section 35-38-2.6-1 (the direct placement statute). The portion of the defendant's sentence that allowed him to serve his two-year habitual offender enhancement in community corrections under the direct placement statute was not authorized by statute and was legally erroneous on its face.

The direct placement statute provides:

(a) Except as provided in subsection (b), this chapter applies to the sentencing of a person convicted of a felony whenever any part of the sentence may not be suspended under IC 35-50-2-2.1 or IC 35-50-2-2.2.¹

By its plain language, the direct placement statute only applies when any part of the sentence may not be suspended under two listed statutes: IC § 35-50-2-2.1 (when a sentence is nonsuspendible because of a juvenile record) and IC § 35-50-2-2.2 (when a portion of a sentence is nonsuspendible for murder and Level 1-3 felony

¹ Subsection (b) of the direct placement statute lists several crimes to which the statute does not apply. The defendant's Level 6 felony resisting law enforcement conviction does not fall within subsection (b), so the analysis falls under subsection (a).

convictions). *See Thomas*, 827 N.E.2d at 581 (noting the limited applicability of the direct placement statute when analyzing whether a defendant’s felony conviction fell within its parameters). The habitual offender enhancement, however, is nonsuspendible under a different statute—Indiana Code 35-50-2-8(i) (stating that an “additional term imposed under this subsection is nonsuspendible”).² Thus, by its plain language, the direct placement statute does not include nonsuspendible habitual offender enhancements under the habitual offender statute.

The goal of statutory interpretation is to determine, give effect to, and implement the intent of the legislature as expressed in the plain language of its statutes. *Kelley v. State*, 166 N.E.3d 936, 937 (Ind. Ct. App. 2021). When a statute is clear and unambiguous, courts interpret statutory language in its plain, ordinary, and usual sense. *Id.* The plain language of the direct placement statute does not include nonsuspendible habitual offender enhancements, although the legislature could have included it. Thus, a trial court is without statutory authority to order a defendant to serve a habitual offender enhancement through direct placement in community corrections under the direct placement statute.

This reading of the direct placement statute aligns with the language in the habitual offender statute and the principles behind it. The purpose of a habitual offender enhancement is to penalize more severely those persons whom prior sanctions have failed to deter from committing felonies. *Marsillett v. State*, 495

² The legislature substantially amended the habitual offender statute, effective July 1, 2014, to clarify that the enhancement was nonsuspendible. *See* P.L. 158-2013.

N.E.2d 699, 705 (Ind. 1986). Habitual offender is a “status” that results in an enhanced sentence and is not a separate crime or sentence. I.C. § 35-50-2-8(j). The plain language of the habitual offender statute provides that the “additional term” is “nonsuspendible,” I.C. § 35-50-2-8(i); however, allowing a defendant to serve his habitual offender enhancement on direct commitment to community corrections requires the trial court to “suspend” the sentence. I.C. § 35-38-2.6-3 (stating that the court may “suspend the sentence” and order placement in community corrections as an alternative to the DOC). “We need scarcely mention that permitting the suspension of an enhanced sentence imposed under [the habitual offender statute] would defeat the clear intent of the legislature to punish and deter recidivistic conduct.” *Reffett v. State*, 844 N.E.2d 1072, 1074 (Ind. Ct. App. 2006) (citing *Devaney v. State*, 578 N.E.2d 386, 388-89 (Ind. Ct. App. 1991)). In other words, suspending a habitual offender enhancement under the direct placement statute runs contrary to both the plain language of the habitual offender statute and the purpose behind it.

An additional statute also provides support for the State’s position that a habitual offender enhancement cannot be served through direct placement in community corrections. Indiana Code Section 35-38-3-3 provides:

(d) A court may not commit a person convicted of a Level 6 felony to the department of correction *unless*:

(3) the person:

(B) is convicted of a Level 6 felony that is enhanced by an additional fixed term under IC 35-50-2-8 [the habitual offender statute]...;

and the person's earliest possible release date is more than three hundred sixty-five (365) days after the date of sentencing;...

(emphasis added). Under this statute, absent his habitual offender enhancement, the defendant in this cause may not have been eligible for commitment to the DOC for his Level 6 felony resisting law enforcement conviction. However, *because of* the habitual offender enhancement, this Court had the authority to order that his entire sentence be served in the DOC. This statute exemplifies the legislature's view of the significance of a habitual offender enhancement when imposing sentence for lower-felony convictions.

In the above captioned cause, this Court lacked statutory authority to sentence the defendant for Level 6 felony resisting law enforcement as a habitual offender to four years through direct placement in community corrections; the habitual offender enhancement portion of that sentence was required to be served as executed time in either the Dubois County Security Center or the Indiana Department of Correction. The remainder of the defendant's sentence for Level 6 felony resisting law enforcement was suspendible under Indiana Code Section 35-50-2-2.2, and this Court could order that portion executed under Indiana Code Section 35-38-3-3(d)(3)(B) or suspended to probation, home detention, and/or community corrections under Indiana Code Sections 35-38-2 *et seq.* and 35-38-2.5 *et seq.*

Respectfully submitted,

/s/ Brian D. Lucchi

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the defendant by his attorney, Clay Cummins, by e-filing on or about the date of filing of the same.

/s/ Brian D. Lucchi
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