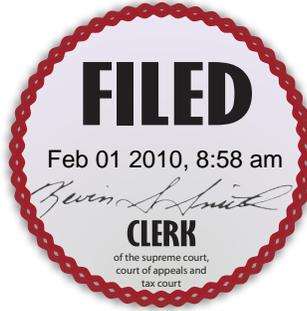


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DANNY FLOYD, JR.)
)
Appellant-Defendant,)
)
vs.) No. 21A05-0908-CR-471
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE FAYETTE SUPERIOR COURT
The Honorable Daniel L. Pflum, Judge
Cause No. 21C01-0408-FA-236
21D01-0808-FD-572

FEBRUARY 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

Danny Floyd, Jr., appeals the trial court's order granting his motion to amend the abstract of judgment to reflect his jail credit time. He claims that the trial court erroneously modified the terms of his plea agreement.

We affirm.

The sole issue for our review is whether the trial court erroneously modified the terms of Floyd's plea agreement.

In June 2007, Floyd pleaded guilty to possession of cocaine as a class B felony, dealing in marijuana as a class D felony, and possession of paraphernalia as a class A misdemeanor in cause number 236 in Fayette County. The trial court sentenced him to thirteen years for the class B felony, three years for the class D felony, and one year for the class A misdemeanor. The court further suspended six years of the B felony sentence on the condition that Floyd comply with the terms and conditions of his probation. The court also ordered Floyd to serve three years of probation on home detention. Lastly, the court awarded Floyd jail time credit for four days spent in confinement before sentencing and four days of credit time, and ordered him released to the community corrections program.

One year later, Floyd was charged with theft in cause number 88 in Wayne County. Also in August 2008, the State alleged that Floyd violated his probation in cause number 236 and also charged him with failure to return to a lawful detention as a class D felony under cause number 572. In February 2009, pursuant to the terms and conditions of a plea agreement, Floyd admitted the probation violation in cause number 236 and pleaded guilty to failure to return to a lawful detention under cause number 572. The trial

court ordered him to serve five years of his sentence in cause number 236 consecutive to a one and one-half year sentence imposed under cause number 572. The court eventually awarded Floyd 284 days of credit time in cause number 572 and no credit time in cause number 236.

Floyd filed a motion to amend the abstract of judgment in cause number 236. Specifically he argued that he was entitled to a total of 423 jail time credit days to reflect the time that he spent in the community corrections program. The trial court issued the following response to Floyd's motion:

On August 10, 2007, the Defendant was sentenced in [236] to 13 years with 6 suspended and 4 days credit. The Defendant was to serve the 7 year executed portion of the sentence through Community corrections which he began on August 13, 2007. The Defendant while out on work release on August 21, 2008, was arrested in Wayne County and eventually convicted of Theft in case number [88]. He was given an executed 1 ½ year sentence to be served consecutive to [236] and was given credit time from August 21, 2008. On March 26, 2009, the Defendant was convicted of Failure to Return to a Lawful Detention in case number [572] and given a 1 ½ year sentence to be served concurrent with [88] but consecutive with [236]. Credit of 226 days was given to the Defendant.

On March 26, 2009, the Defendant was also found to have violated his probation in [236] and five years of the previously suspended time was ordered executed and added to the previous 7 years. As of March 26, 2009, the Defendant has total credit time of 596 days. As a result, the defendant has, as of March 26, 2009, 270 days credit time in [236].

Appellant's App. at 25. Floyd appeals.

Floyd's sole contention is that the trial court erroneously "altered his original sentence by including an additional term of five (5) years on to his sentence and

terminating the remaining probation period.”¹ Appellant’s Br. at 5. As a preliminary matter, we note that Floyd has waived appellate review of this issue because he failed to submit a complete record in support of his claim. *See Titone v. State*, 882 N.E.2d 219, 221 (Ind. Ct. App. 2008).

Waiver notwithstanding, we find no error. In 2007, the trial court sentenced Floyd to thirteen years for the class B felony. The court suspended six years of the sentence on the condition that Floyd comply with the terms and conditions of his probation. After Floyd violated his probation, the court ordered him to serve five years of the previously suspended six years. The imposition of a suspended sentence when a defendant’s probation is revoked does not modify a plea agreement. *See Abernathy v. State*, 852 N.E.2d 1016, 1021 (Ind. Ct. App. 2006) (holding that the imposition of a previously suspended sentence is merely a consequence of defendant’s violation of the terms of his initial sentence imposed in conformity with the plea agreement). We find no error.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.

¹ Floyd does not challenge the trial court’s award of jail time credit.