



Appellant-defendant Jeffrey A. Graham appeals the revocation of his probation and the trial court's calculation of the amount of credit time to which he is entitled. Graham argues, among other things, that the State was erroneously permitted to amend the petition to revoke his probation. Finding that the amendment was proper, and finding no reversible error, we affirm and remand with instructions to correct the order revoking probation and recalculate Graham's sentence consistent with this decision.

### FACTS

On September 27, 2007, Graham was convicted of class D felony criminal recklessness, class A misdemeanor resisting law enforcement, and class A misdemeanor criminal mischief in Cause Number 03D01-0512-FD-2059 (Cause 2059). The trial court imposed sentences of thirty-two executed months for criminal recklessness plus one year each for resisting law enforcement and criminal mischief. The misdemeanor sentences were suspended to eighteen months of probation. Graham appealed his convictions, and our Supreme Court eventually reversed Graham's conviction for resisting arrest and affirmed his other convictions and sentences. Graham v. State, 903 N.E.2d 963, 966 (Ind. 2009). In response, the trial court vacated the resisting arrest conviction and revised Graham's probationary term in Cause 2059 to one year for the criminal mischief conviction.

Graham began serving his probation in Cause 2059 on August 22, 2008. The State filed a petition to revoke his probation on September 16, 2008, alleging that Graham had left his residence without permission on September 8 and remained away until September

15. A warrant was issued for Graham's arrest. He was arrested on November 25, 2008, and released to probation the following day.

Based upon Graham's September 8 disappearance, the State charged Graham with class D felony escape and class D felony theft in Cause Number 03D01-0812-FC-1976 (Cause 1976). The information alleged that Graham had left his home without permission and exerted unauthorized control of his electronic monitoring device.

On March 3, 2009, the State filed an amended petition to revoke Graham's probation in Cause 2059, alleging that Graham had left his residence on February 25, 2009, and removed his electronic monitoring device. Another warrant for Graham's arrest was issued on March 12, 2009.

Graham's jury trial in Cause 1976 took place on July 14, 2009. He was tried in absentia, inasmuch as he failed to appear. The jury convicted Graham of class D felony escape. The trial court issued a warrant for his arrest and postponed sentencing until he was taken into custody. Graham was located and arrested in California on March 11, 2010. He was returned to Indiana and remained incarcerated at that time.

The trial court held a fact-finding and disposition hearing on the petition to revoke Graham's probation in Cause 2059 on August 18, 2010. At the start of the hearing, Graham moved to dismiss the petition because it mistakenly stated that Graham was on probation for criminal mischief as a class D felony instead of as a class A misdemeanor, and that his probationary term was eighteen months rather than one year. In response, the State moved to amend the petition to reflect that Graham was on probation for one year

for class A misdemeanor criminal mischief. The trial court permitted the amendment, finding that it did not alter the form or substance of Graham's possible defenses.

After hearing evidence, the trial court found that Graham had violated his probation in Cause 2059, but noted that Graham had served his sentences for criminal recklessness and criminal mischief. Consequently, the trial court ordered the time that Graham had been confined in Cause 2059 in excess of the time required to serve his sentences be applied to any sentence he might receive in Cause 1976. Graham was released from Cause 2059.

On August 24, 2010, the trial court sentenced Graham in Cause 1976. It imposed a sentence of thirty months imprisonment, awarding Graham with thirty-five credit days against the sentence. Graham now appeals.

## DISCUSSION AND DECISION

### I. Motion to Dismiss

Graham first argues that the trial court should have granted his motion to dismiss the petition to revoke his probation, which was based on the errors contained in the petition. Whether to grant or deny a motion to dismiss a petition to revoke probation is within the trial court's discretion, and we will reverse only for an abuse of that discretion. Isaac v. State, 605 N.E.2d 144, 147 (Ind. 1992). An abuse of discretion will not require reversal unless it affects the substantial rights of the party or is inconsistent with the concept of substantial justice. Ross v. State, 835 N.E.2d 1090, 1092 (Ind. Ct. App. 2005).

The petition to revoke probation in Cause 2059 contains two errors: it states that Graham was on probation for class D felony criminal recklessness, when it was actually for class A misdemeanor criminal recklessness, and it states that the term of his probation was eighteen months, when it was actually one year. When Graham brought these errors to the trial court's attention via his motion to dismiss, the trial court permitted the State to amend the petition accordingly.

We agree with the trial court that the amendments related to form rather than substance and that the errors—and the correction of those errors—in no way affected Graham's defense(s) to the petition. In other words, Graham has failed to establish that the denial of his motion to dismiss and ruling permitting the State to amend the petition affected his substantial rights. Consequently, we find that the trial court did not err by denying the motion to dismiss the petition to revoke.

## II. Error in Written Order

Graham argues, and the State concedes, that the trial court mistakenly stated in its order on the petition to revoke that Graham had admitted to the alleged violations. In fact, Graham contested the violations and a full fact-finding hearing on the petition was held. Consequently, we remand to the trial court so that its order can be corrected in this regard.

## III. Credit Time

Finally, Graham argues that the trial court erred in calculating the amount of credit time to which he is entitled in Cause 1976. Every offender receives credit for actual time

served against his sentence: each day served reduces the offender's remaining sentence by one day. Purcell v. State, 721 N.E.2d 220, 222-23 (Ind. 1999). Offenders may also receive credit time: additional time removed from their sentences for each day served, for good behavior, or other achievements. Id. Offenders in Class I, such as Graham, earn one day of credit time for every day imprisoned. Neff v. State, 888 N.E.2d 1249, 1250 (Ind. 2008).

Before Graham's resisting law enforcement conviction in Cause 2059 was vacated, the trial court had applied sixty-six days of credit for time served in presentencing confinement to that sentence. After that conviction was vacated, those sixty-six days were "transferred" to his remaining sentence—the 365-day sentence for criminal mischief. In November 2008, Graham spent two actual days of incarceration in connection with the first petition to revoke in Cause 2059. Additionally, Graham was arrested in California on March 11, 2010, on the second warrant for his probation violations in Cause 2059, and remained incarcerated until his disposition hearing on August 18, 2010, for a total of 160 actual days of incarceration.

By August 18, 2010, therefore, Graham had accumulated 228 total actual days of incarceration: 66 days of presentencing confinement; 2 days of incarceration in November 2008; and 160 days of incarceration in mid-2010. To fulfill the 365-day sentence remaining in Cause 2059 for criminal mischief, we must apply 182 actual days of incarceration, plus 182 days of credit time.

Thus, after the sentence in Cause 2059 is fulfilled, there are forty-six remaining actual days of incarceration. Graham spent an additional six actual days of incarceration between the dispositional hearing in Cause 2059 and the sentencing hearing in Cause 1976. Consequently, Graham is entitled to credit for fifty-two actual days of incarceration plus fifty-two days of credit time, for a total credit of 104 days against his sentence in Cause 1976. The trial court erred by finding that Graham was entitled to only thirty-five days of credit, and we remand so that the sentencing order can be corrected accordingly.

The judgment of the trial court is affirmed and remanded with instructions to (1) correct the order revoking Graham's probation in Cause 2059 by deleting the statement that Graham admitted to the alleged probation violations; and (2) recalculate Graham's total sentence in Cause 1976 based on total credit time of 104 days.

MAY, J., and BRADFORD, J., concur.