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IN THE
COURT OF APPEALS OF INDIANA

JAMES A. WATSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-1005-CR-297
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT NO. 3
The Honorable Teresa Kline, Judge Pro Tempore
Cause No. 20D03-0504-FC-55

April 11, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, James A. Watson (Watson), appeals the trial court's calculation of credit for the time he served prior to the revocation of his probation.

We reverse and remand with instructions.

ISSUE

Watson raises one issue on appeal, which we restate as follows: Whether the trial court properly calculated his credit for the time he served prior to the revocation of his probation.

FACTS AND PROCEDURAL HISTORY

On April 15, 2004, the State filed an Information charging Watson with three Counts of child exploitation, Class D felonies, Ind. Code § 35-42-4-4(b)(2); one Count of possession of child pornography, a Class D felony, I.C. § 35-42-4-4(c)(8); and four Counts of possession of child pornography, Class A misdemeanors, I.C. § 35-42-4-4(c). On March 30, 2006, Watson entered a plea of guilty to Counts I and II, child exploitation, as Class C felonies, I.C. § 5-42-4-4(b), and Count IV, possession of child pornography, as a Class D felony, I.C. § 35-42-4-4(c)(8), pursuant to a written plea agreement. On April 27, 2006, the trial court sentenced Watson to four years for both Counts I and II and one and one-half years for Count IV, with sentences to be served consecutively, for an aggregate sentence of nine and one-half years. In addition, the trial court suspended Watson's sentence of one and one-half years for his conviction for Count IV and awarded him 17 days credit for time spent in custody and 17 days good-time credit.

On July 27, 2006, the trial court entered an order modifying Watson's sentence, which allowed Watson to serve the balance of the executed portion of his sentence on a like term of reporting probation. As a term and condition of this probation, the trial court ordered that Watson undergo a psychosexual evaluation and successfully complete any course of therapy recommended by the evaluator.

Subsequently, on March 9, 2007, Watson's probation officer filed a petition claiming Watson had violated his probation. On June 28, 2007, the trial court found that Watson had violated his probation and imposed a sentence of 198 days in the Elkhart County Jail. The trial court also awarded Watson 99 days of credit for time spent in custody and 99 days good-time credit.

Again, on May 21, 2008, Watson's probation officer filed a petition for violation of probation. On June 26, 2008, the trial court accepted Watson's admission that he had violated his probation and imposed a sentence of two years of home detention with alcohol monitoring. Against that sanction, the trial court awarded Watson 22 days of credit for time spent in custody and 22 days good-time credit.

On November 6, 2008, Watson's probation officer filed another petition for violation of probation. On January 15, 2009, Watson admitted to violating the terms of his probation, and the trial court imposed a sanction of 116 days to be served in the Elkhart County Jail. Against that sanction, the trial court awarded Watson credit for 58 days spent in custody, along with 58 days of good-time credit.

Then, on February 17, 2009, Watson's probation officer filed the instant petition for violation of probation. On August 27, 2009, the trial court imposed the balance of the defendant's sentence at the Indiana Department of Correction (IDOC). Watson's probation officer submitted a credit time report to the trial court, which stated that Watson had accumulated 526 days of total time served, with 378 days eligible for good-time credit and 148 days not eligible for good-time credit. Based on this information, the trial court awarded Watson 378 days credit for time actually spent in custody through August 27, 2009 and no good-time credit.

In response to this judgment, Watson sent a handwritten letter to the trial court on October 20, 2009, asking the trial court to review the credit calculations. On January 21, 2010, the trial court held a hearing on Watson's letter. At the hearing, Watson claimed that the probation department had incorrectly calculated his credit time. As a result, the trial court ordered the probation department to re-calculate the time due to Watson through that date and advise the court through a memorandum. On February 18, 2010, the trial court held another hearing and explained to Watson that he was getting credit for 526 days actually spent in custody between March 21, 2007 and August 27, 2009, together with 378 days of good-time credit. Watson agreed with that calculation of his credit for the time after his probation violation, and the trial court agreed to further investigate Watson's claim that he did not get credit for the 17 days he was confined prior to sentencing and the 91 days he spent in custody at the IDOC from April 27, 2006 to July 27, 2006.

On March 30, 2010, upon reviewing Watson's record, the trial court found that Watson had accumulated 486 days credit for time served and 148 days good-time credit. On April 26, 2010, Watson filed a motion to correct error, alleging that the trial court had erred by refusing to award credit for the 17 days he was confined prior to sentencing and the 91 days he spent in the IDOC. On May 5, 2010, the trial court denied Watson's motion to correct error.

Watson now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Waiver*

Before addressing the merits of Watson's claim, it is first appropriate for us to determine whether or not we have jurisdiction to decide this case. The State argues that Watson is foreclosed from challenging the trial court's determination of credit time because he failed to file a notice of appeal or a motion to correct error within 30 days of the original order on probation revocation. Specifically, instead of filing a motion to correct error or an appeal, Watson sent a handwritten letter to the trial court on October 20, 2009, protesting that the trial court did not properly calculate his credit time. The State argues that this letter did not constitute a motion to correct error and was also beyond the 30 day time limit for a motion.

Under Indiana Trial Rule 59, a motion to correct error may be made by the trial court or by any party. Ind. Trial Rule 59(B). Such a motion should be filed no later than 30 days after the entry of a final judgment is noted in the Chronological Case Summary. Ind. Trial

Rule 59(C). Then, any modification or setting aside of a final judgment or an appealable final order following the filing of a motion to correct error shall be an appealable final judgment or order. Ind. Trial Rule 59(F). Indiana Appellate Rule 9(a) requires a notice of appeal to be filed within 30 days of a final judgment, unless a motion to correct error is filed within those 30 days. If a notice of appeal is not timely filed, that right to appeal is forfeited, except as provided by Indiana Post-Conviction Rule 2. *Dawson v. State*, 938 N.E.2d 841, 843 (Ind. Ct. App. 2010).

Here, we conclude that Watson did not waive his claim, because it is apparent from the evidence that the trial court interpreted Watson's letter as a timely motion to correct error. When the trial court received Watson's letter, it scheduled a hearing to reconsider his credit time calculations and also entered an order and amended the abstract of judgment to state that Watson had accumulated 486 days credit for time served and 148 days good-time credit. The State should have made its argument that Watson did not file a timely or appropriate motion before the trial court at that point in Watson's claim, rather than now. Instead, the trial court amended its judgment, and Watson may now appeal the trial court's amended judgment under Indiana Trial Rule 59(F). Moreover, Watson took timely measures to preserve his claim after the trial court amended its judgment. He made a timely motion to correct error, in which he disputed the trial court's amended judgment, and then he filed a timely appeal when the trial court denied his motion to correct error.

Alternatively, the State argues that Watson did not preserve his claim because he should have filed a petition for post-conviction relief rather than a motion to correct error.

As above, we find that this is not a timely argument and that Watson now has a right to appeal the trial court's amended judgment under Indiana Trial Rule 59(F). Nevertheless, we do not think that Watson erred in filing a motion to correct error.

The Indiana supreme court has explained the procedure for challenging a trial court's imposition of credit time. When an error related to sentencing occurs, it is in the best interests of all concerned that it is immediately discovered and corrected. *McAllister v. State*, 913 N.E.2d 778, 782 (Ind. Ct. App. 2009). Other than an immediate motion to correct sentence, such errors are best presented to the trial court by the optional motion to correct error under Indiana Trial Rule 59, or upon a direct appeal from the final judgment of the trial court pursuant to Indiana Appellate Rule 9(A). *Id.* at 782. Alternately,

> when claims of sentencing errors require consideration of matters outside of the face of the sentencing judgment, they are best addressed promptly on direct appeal and thereafter via post-conviction relief proceedings where applicable…claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.

Id. (quoting *Robinson v. State*, 805 N.E.2d 783, 787 (Ind. 2004)). Instead, the preferred procedure in such positions is by way of a petition for post-conviction relief. *Robinson*, 805 N.E.2d at 787.

The State argues here that Watson waived his claim because a motion to correct sentence is only proper where a sentence is facially defective. Because Watson's claim requires a consideration of his probation proceedings before trial, it is not facially defective. The State's argument is irrelevant, though, because Watson did not make a motion to correct

sentence. He made a motion to correct error. As stated in *McAllister* and *Robinson* above, a motion to correct error is an appropriate way to present a sentencing issue to the trial court.

In addition, while it is unknown whether the trial court considered Watson's handwritten letter a substitute for a motion to correct error or a motion to correct sentence, there is no reason for us to interpret it as a motion to correct sentence *post facto* when there is no evidence supporting that conclusion in the record. It is also unnecessary for us to discuss whether Watson should have filed a petition for post-conviction relief when this court has held that a motion to correct error is appropriate in a claim such as Watson's. Accordingly, we determine that we have jurisdiction to hear Watson's claim.

II. *Standard of Review*

The trial court has discretion to grant or deny a motion to correct error, and we reverse the trial court's decision only for an abuse of that discretion. *James v. State,* 872 N.E.2d 669, 671 (Ind. Ct. App. 2007). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.* at 671.

Generally, because pre-sentence jail time credit is a matter of statutory right, trial courts do not have discretion in awarding or denying such credit. *Id.* A person who is not a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I. I.C. § 35-50-6-4(a). A person assigned to Class I earns one day of credit time for each day he is imprisoned for a crime or is confined awaiting trial or sentencing. I.C. § 35-50-6-3. The determination of a defendant's pre-trial credit

depends on (1) pretrial confinement, and (2) the pretrial confinement being a result of the criminal charge for which the sentence is being imposed. *James*, 872 N.E.2d at 672.

III. *Calculation of Watson's Time Credit and Good-Time Credit*

Here, Watson only disputes the trial court's judgment with respect to the days he spent time in custody prior to his sentencing. Looking at the history of Watson's claim, though, we conclude that the trial court's decision is also against the logic and effect of the facts and circumstances with respect to the days Watson spent in custody after his sentencing. On August 31, 2009, Watson's probation officer submitted a memorandum to the trial court detailing that Watson had spent 526 days in custody through August 27, 2009, of which 378 days were eligible for good-time credit. Based on this information, the trial court awarded Watson 378 days credit for time actually spent in custody and no good-time credit. This judgment went against the logic and effect of the facts before the court. As stated above, under Indiana Code section 35-50-6-3, a defendant earns a day of credit for every day spent in custody. Watson's probation officer informed the trial court that Watson had spent 526 days in custody, so his credit time should not have been less than 526 days.

Subsequently, on March 30, 2010, the trial court amended its judgment and found that Watson had accumulated 486 days credit for time served and 148 days good-time credit. The trial court does not explain its reasoning for changing its judgment from 378 or 526 days, and we cannot readily interpret a reason based on the facts here. Nevertheless, we maintain that the trial court should not have awarded Watson fewer than 526 days credit for time served.

Next, we turn to the defendant's arguments that the trial court should have awarded him credit time and good-time credit for the time he spent in custody prior to his sentencing. Because pre-sentence jail time credit is a matter of statutory right, we determine that Watson earned credit for the 17 days the trial court awarded him at sentencing on April 27, 2006, and for the 91 days he spent in IDOC from April 27, 2006 to July 27, 2006.

We also award Watson good-time credit for the 17 days he spent in custody prior to his sentencing. There is adequate evidence in the record that the trial court did indeed award him good-time credit for those days. We cannot, however, award Watson good-time credit for the 91 days he spent in custody at IDOC because there is no evidence in the record concerning whether or not he earned good-time credit for those days. As a result, we remand this issue to the trial court with instructions to contact IDOC and determine whether Watson earned good-time credit for his time at IDOC from April 27, 2006 to July 27, 2006.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not correctly calculate Watson's credit for time served in custody and for good-time while in custody. We remand this case to the trial court with instructions to grant Watson credit for the 108 days he spent in custody before sentencing, the 526 days he spent in custody after sentencing, the 17 days good-time credit he earned before sentencing, and the 378 days good-time credit he earned after he violated his probation. In total, we award Watson 634 days credit for time spent in custody and 395 days good-time credit. We also instruct the trial court to contact IDOC to

determine whether or not Watson earned good-time credit from April 27, 2006 to July 27, 2006.

Reversed and remanded.

ROBB, C.J., and BROWN, J., concur.