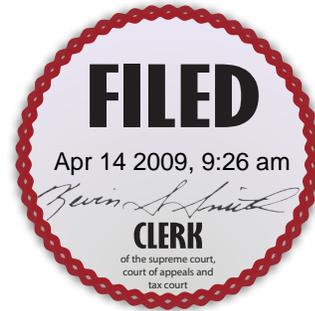


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN A. CALDEMONE,)

Appellant-Defendant,)

vs.)

No. 02A05-0810-PC-601

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0702-CF-118

APRIL 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Appellant-Defendant John A. Caldemone appeals the trial court's denial of his motion to correct erroneous sentence. We affirm.

ISSUE

Caldemone raises one issue for our review, which we restate as: Whether the trial court correctly determined Caldemone's credit time.

FACTS AND PROCEDURAL HISTORY

Caldemone was arrested on February 21, 1997, and charged with aggravated battery, a Class B felony. On November 19, 1997, the State filed a second count of attempted murder, a Class A felony.

A jury trial was conducted on November 25, 1997, after which Caldemone was found guilty of both counts. A sentencing hearing was conducted on December 22, 1997, and judgment of conviction was entered for attempted murder with the aggravated battery conviction merging into the attempted murder conviction. Caldemone was sentenced to thirty years in the Department of Correction, and he was granted 309 days of jail time credit.

Caldemone subsequently filed a series of motions questioning the trial court's calculation of his jail time credit. All motions were denied, and on September 11, 2008, Caldemone filed a motion to correct erroneous sentence in which he again claimed he should have been given additional credit time. This motion was also denied, and this appeal ensued.

DISCUSSION AND DECISION

Caldemone claims that the trial court should have given him 324 days of credit (representing the number of days from his arrest until the time he was transferred to the Department of Correction on January 6, 1998). In the alternative, Caldemone claims that he should have received 599 days of credit time (representing 309 days from arrest to sentencing, 15 days from sentencing to transport to the Department of Correction, and 275 days from the filing of the attempted murder count).

A motion to correct erroneous sentence is viable only as a vehicle to address a sentence which is erroneous on its face. *Neff v. State*, 888 N.E.2d 1249, 1251 (Ind. 2008). Caldemone has not demonstrated that his judgment of sentence is erroneous on its face; indeed, he fails to include the sentencing order as part of the record on appeal. Caldemone does include an abstract of judgment in his Appellant's Appendix, but a motion to correct erroneous sentence must arise from the formal judgment, not the abstract. *See Robinson v. State*, 805 N.E.2d 783, 793-94 (Ind. 2004). Because he improperly filed a motion to correct erroneous sentence, Caldemone cannot prevail.

Even on the merits, Caldemone does not prevail. Ind. Code § 35-38-3-2(b)(4) provides that the trial court's judgment shall include "the amount of credit, including credit time earned, for time spent in confinement *before sentencing*." (Emphasis added). The trial court correctly indicated that the amount of credit time between Caldemone's arrest and his confinement before sentencing was 309 days. Furthermore, Ind. Code § 35-38-3-2(d) provides that the "term of imprisonment begins on the date sentence is imposed." Accordingly, any credit time earned after the date of sentencing, even for time

earned while waiting for transport to a Department of Correction facility, is outside the trial court's purview. Caldemone's issue, if any exists, is with the Department of Correction.

Additionally, we note that Ind. Code § 35-50-6-3 provides that a defendant is to be awarded one day of Class I credit for each day he is imprisoned for a crime or confined awaiting trial or sentencing. By the terms of this statute, Caldemone is not entitled to receive extra credit time for time served after a second offense was charged.

Affirmed.

ROBB, J., and CRONE, J., concur.