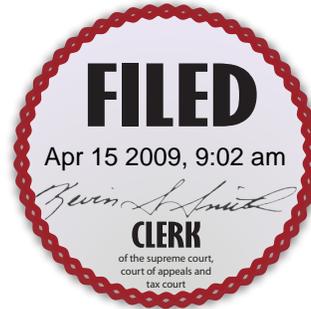


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

ATTORNEYS FOR APPELLEE:

DONTE T. GIBSON
Pendleton, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DONTE T. GIBSON,)
)
Appellant-Petitioner,)
)
vs.) No. 02A03-0811-PC-542
)
STATE OF INDIANA,)
)
Appellee-Respondent.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-9709-CF-584

April 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Donte Gibson appeals the trial court's denial of his motion for jail time credit. Concluding that the trial court did not abuse its discretion in denying Gibson's motion, we affirm.

Facts and Procedural History

Pursuant to a plea agreement, Gibson was convicted on November 16, 1998, of kidnapping, a Class A felony, and robbery, a Class B felony. He was sentenced on that date to twenty years with five years suspended for the kidnapping conviction and six years for the robbery conviction, with the sentences to be served consecutively. The judgment of conviction states that "Defendant is granted credit for 414 days served in jail." Appellant's Appendix at 21. The abstract of judgment likewise reflects that Gibson was confined prior to sentencing for 414 days. Id. at 22.

On September 18, 2008, Gibson submitted an Indiana Department of Correction ("DOC") "Request for Interview" alleging that he "was only awarded 414 days credit time spent incarcerated awaiting sentence and . . . [has] not been credited 414 days of earned Class I credit time in addition to the 414 days of time served" Id. at 23. The DOC reply, handwritten on the Request for Interview form, is that the equivalent number of good time credits for each day of jail time credit is automatically calculated and "[y]our time is correct." Id.

On September 24, 2008, Gibson filed a motion for jail time credit with the trial court, in which he alleges he was awarded 414 days of jail time credit when his sentence was imposed and is entitled to an additional 414 days of earned jail time credit. Id. at 4.

His prayer for relief is that the trial court “award him 828 days of additional jail time credit that he is entitled to by law.”¹ Id. at 5. The trial court denied Gibson’s motion without a hearing.

Discussion and Decision

A motion for jail time credit is akin to a motion to correct erroneous sentence, which we review for an abuse of discretion. Brattain v. State, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002). An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it. Id.

A motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of statutory authority. Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004). Gibson contends in his motion to correct sentence that the judgment of conviction should have reflected that he was entitled to an additional 414 days of jail time credit and that the trial court abused its discretion in denying his motion.² In Robinson, our supreme court addressed an identical issue. The defendant therein also contended that the trial court’s sentence reported only the actual time served before sentencing and did not comply with the requirement of Indiana Code section 35-38-3-2(b) that it also include a separate statement of credit time earned.³ The court agreed that a trial court’s judgment of

¹ Clearly, Gibson is not entitled to 828 additional days of credit time and Gibson does not elsewhere argue that he is. He is seeking 828 days total credit time for his pretrial confinement.

² Indiana Code section 35-50-6-4(a) initially assigns a person imprisoned awaiting trial or sentencing to Class I. A person assigned to Class I earns one day of credit time for each day the person is imprisoned awaiting trial or sentencing. Ind. Code § 35-50-6-3(a).

³ Indiana Code section 35-38-3-2(b) provides that a judgment must include, *inter alia*, “the amount of credit, including credit time earned, for time spent in confinement before sentencing.” Ind. Code § 35-38-3-2(b)(4).

conviction is statutorily required to separately include both the amount of time spent by the defendant prior to imposition of sentence and the amount of credit time earned. Id. at 789. However, the court adopted an appellate presumption that “[s]entencing judgments that report only days spent in pre-sentence confinement and fail to expressly designate credit time earned shall be understood by courts and by the Department of Correction automatically to award the number of credit time days equal to the number of pre-sentence confinement days.” Id. at 792.

Because the Robinson presumption corrects the omission of credit time designation on the judgment of conviction, the judgment of conviction is not erroneous on its face and the trial court did not err in denying Gibson’s motion to correct sentence.⁴ See Young v. State, 888 N.E.2d 1253, 1254 (Ind. 2008) (based on Robinson, “the Court of Appeals correctly concluded that Young is presumptively entitled to 204 days of earned credit time in addition to his 204 days of time already served, and [Young] need

⁴ If Gibson intends to argue that he is not in fact being given the benefit of the presumption and has evidence to support that contention, a motion to correct erroneous sentence is not the proper vehicle for raising the issue, as such issue would necessarily require consideration of matters outside the face of the sentencing judgment. See Robinson, 805 N.E.2d at 787. In addition, before Gibson could raise such a claim in state court he would be required to exhaust his administrative remedies with the DOC. Neff v. State, 888 N.E.2d 1249, 1252 (Ind. 2008). It appears, however, from both Gibson’s calculation and the State’s calculation of his expected release date that he is, in fact, being given the benefit of the presumption. See Brief of Appellant at 2; Brief of Appellee at 6.

not resort to our state court system in order for the time to be credited toward his sentence.”).

Conclusion

The trial court did not abuse its discretion in denying Gibson’s motion to correct sentence.

Affirmed.

CRONE, J., and BROWN, J., concur.