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IN THE
COURT OF APPEALS OF INDIANA

MARSHALL JACKSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1002-CR-82
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-7905-CR-79

May 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Marshall Jackson, pro se, appeals the denial of his Motion for Relief From Judgment Or Order, challenging that ruling s the sole issue on appeal.

We affirm.

The facts are that in 1980, Jackson was convicted of attempted murder and robbery, both as class A felonies. He was also found to be a habitual offender. He was sentenced to forty years for the attempted murder conviction, which was enhanced by thirty years as a result of his habitual offender status. He was sentenced to thirty years for the robbery conviction, to be served concurrently with the sentence for the attempted murder. According to a January 30, 2008 amended abstract of judgment, Jackson received 403 days of credit time for pretrial confinement. Since then, Jackson has apparently attempted to attack the amount of credit time to which he is entitled by filing: (1) a petition for jail time credit and (2) a motion to amend the abstract of judgment, both of which were denied; (3) at least one petition for post-conviction relief (PCR), which was "refused", *Appellant's Appendix* at ; (4) several successive PCR petitions, which this court "decline[d] to authorize", *id*.; and (5) the instant motion to correct erroneous sentence.

On December 15, 2009, Jackson filed a motion to correct erroneous sentence pursuant to Indiana Trial Rules 59 and 60. On December 18, 2009, the trial court "refused" the motion on grounds that "the defendant made this same request in 2005, and the court refused that pleading, as well." *Appellant's Appendix* at 16. On January 15, 2010, Jackson filed a Motion for Relief From Judgment Or Order, challenging the trial court's refusal of the December 15 motion to correct erroneous sentence. It appears the January 15 motion was denied on the same day it was filed. On February 5, 2010, Jackson filed a notice of appeal

challenging the denial of his January 15 motion for relief from judgment. This appeal ensued.

The amended abstract of judgment relating to Jackson's sentence for the 1980 convictions included a notation, "No. of days confined prior to sentencing 403." *Id*. at 19. It appears that Jackson has spent considerable effort, and not a little of our courts' time, seeking an order clarifying that he is entitled to good-time credit equal to that amount, i.e., 403 days. Ignoring for the sake of judicial economy several obvious procedural irregularities with respect to this appeal, we conclude that the record before us does not permit this court to address the merits of Jackson's claim.

In *Neff v. State*, 888 N.E.2d 1249 (Ind. 2008), the defendant presented a sentencing challenge much like the one Jackson presents here. That is, the abstract of judgment specified only the number of days of time served, but, according to the *Neff* defendant, the trial court should have specified that he was to receive an equal number of days of earned time credit time in addition to days of time served toward his sentence. The Court noted that in *Robinson v. State*, 805 N.E.2d 783, 792 (Ind. 2004), it "adopted a presumption that '[s]entencing judgments that report only days spent in pre-sentence confinement and fail to expressly designated 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.'" *Neff v. State*, 888 N.E.2d at 1251. The Court concluded that this presumption "has the effect of treating [the failure to award good-time credit under these circumstances] as merely an administrative error that can be addressed by the Department of Correction (DOC) easily and efficiently through its offender grievance

process." *Young v. State*, 888 N.E.2d 1253, 1254 (Ind. 2008). The Court subsequently clarified in *Neff* that in order to prevail on a claim of this sort, a prisoner must show that administrative remedies have been exhausted before pursuing a remedy in the state court system.

In addition, in *Neff*, the Court reiterated a point of emphasis announced in *Robinson* to the effect that "a motion to correct an erroneous sentence may only arise out of information contained on the formal judgment of conviction, and not from an abstract of judgment." *Neff v. State*, 888 N.E.2d at 1251. The Court clarified in *Neff* that as of the time of that decision, it was aware of only one county – Marion County – that routinely issued abstracts of judgment and not formal judgments of conviction. Accordingly, prisoners whose convictions emanate from any county other than Marion County may not challenge the failure to award good-time credit based upon documentation of a conviction that includes only an abstract of judgment.

An examination of *Robinson*, *Neff* and *Young* reveals that Jackson's challenge here fails for two reasons. First, to present such a claim, Jackson "must show what the relevant DOC administrative grievance procedures are, and that they have been exhausted at all levels." *Young v. State*, 888 N.E.2d at 1254. Jackson has failed to do this.[1] Second, Jackson was convicted in Lake County. There is no indication that Lake County, like Marion County,

[1] We note Jackson's contention in his reply brief that he did, in fact, provide this court with documentation reflecting that "the [Department of Correction] took no action when appellant tried to exhaust administrative remedies." *Replay Brief of Appellant* at 3. We presume this represents a claim that he did exhaust his administrative remedies. The "documentation" of this claim consists of a footnote appearing at the end of his Memorandum of Law accompanying his December 15, 2009 Motion To Correct Erroneous Sentence. That footnote provided as follows: "The plaintiff submitted an informal grievance to correct the sentence; however, prison official [sic] failed to respond to plaintiff's effort to exhaust administrative remedy [sic]. (See attached informal grievance attached hereto." *Appellant's Appendix* at 30. Even assuming for the sake of argument that the attachments to which the footnote alluded would suffice to prove Jackson exhausted administrative remedies, they do not appear in the material before this court. Thus, Jackson has failed to demonstrate to this court that he satisfied *Neff*'s exhaustion requirement.

issues only abstracts of judgment and not formal judgments of conviction. Therefore, the presumption, "when a defendant files a motion to correct an erroneous sentence in a county that does not issue judgments of conviction …, the trial court's abstract of judgment will serve as an appropriate substitute [for a formal judgment of conviction] for purposes of making the claim" does not apply. *Neff v. State*, 888 N.E.2d at 1251. The record before us contains only an abstract of judgment. As the Court held in *Robinson*, "a motion to correct sentence may not be used to seek corrections of claimed errors or omissions in an abstract of judgment." *Robinson v. State*, 805 N.E.2d at 794. Thus, for the foregoing reasons, Jackson's claim fails.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.