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:

WILLIAM SOPER
Plainfield, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANDREW R. FALK
Deputy Attorney General
Indianapolis, Indiana

FILED
Jun 01 2011, 9:21 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

WILLIAM SOPER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-1009-CR-611
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara F. Collins, Judge
Cause No. 49F08-0904-FD-39165

June 1, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

William Soper, *pro se*, appeals the denial of his motion for jail time credit. Soper raises one issue, which we restate as whether the court erred in denying his motion. We affirm.

The relevant facts follow. On April 11, 2009, the State charged Soper with two counts of battery by bodily waste as a class D felony.[1] On April 22, 2010, pursuant to a written plea agreement, Soper pled guilty to two counts of battery by bodily waste as class D felonies. The court accepted Soper's plea, and the court's abstract of judgment dated April 22, 2010, and signed April 23, 2010, indicates that Soper was "confined prior to sentencing" for seven days. Appellant's Appendix at 13.

On August 3, 2010, Soper, *pro se*, filed a motion for jail time credit and argued that the Department of Correction "only gave him 7 days of jail time credit, which is incorrect." Appellant's Appendix at 16.[2] Soper's motion referred to two attached exhibits, one of which consisted of the signed plea agreement, which provided that Soper would receive a credit of "14+14=28 days," id. at 18, and the other of which consisted of Department of Correction arrival and identification information which indicated that Soper was sentenced on April 22, 2010 and received a "JAIL TIME CRED. (JTC)" of "7." Id. at 19. The trial court denied Soper's motion.

[1] The charging information is not included in the record.

[2] The appellant's appendix contains the first page of Soper's motion, which contains the court's file-stamp, and two versions of the second page of the motion, one of which is signed and the other of which is unsigned. The signed page alleges Soper was given seven days of credit time, and the unsigned version alleges that Soper was given nine days of credit time.

The issue is whether the court abused its discretion in denying Soper's motion for jail time credit. Soper's motion for jail time credit is tantamount to a motion to correct erroneous sentence. See Brattain v. State, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002) (holding that a request for credit for time served was tantamount to a motion to correct erroneous sentence). We review a trial court's decision on a motion to correct erroneous sentence "only for abuse of discretion." Mitchell v. State, 726 N.E.2d 1228, 1243 (Ind. 2000), reh'g denied, abrogated on other grounds by Beattie v. State, 924 N.E.2d 643 (Ind. 2010). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. Myers v. State, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999). However, we will "review a trial court's legal conclusions under a *de novo* standard of review." Mitchell, 726 N.E.2d at 1243.

An inmate who believes he has been erroneously sentenced may file a motion to correct the sentence pursuant to Ind. Code § 35-38-1-15. Neff v. State, 888 N.E.2d 1249, 1250-1251 (Ind. 2008). Ind. Code § 35-38-1-15 provides:

> If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

In Robinson v. State, the Indiana Supreme Court noted that a motion to correct erroneous sentence is available only when the sentence is "erroneous on its face." 805 N.E.2d 783, 786 (Ind. 2004) (citations omitted). Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to

correct erroneous sentence. See id. at 787. Sentencing claims that are not facially apparent "may be raised only on direct appeal and, where appropriate, by post-conviction proceedings." Id. "Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the sentencing judgment, and the 'facially erroneous' prerequisite should henceforth be strictly applied . . . ." Id.

Soper argues that the court erred in denying his motion for jail time credit and failed to give him credit for jail time served from the date of his arrest until his conviction. Specifically, Soper argues he was incarcerated from his arrest on April 13, 2009, until his conditional release on September 1, 2009, which was 140 days, and again from March 29, 2010, until his sentencing on April 22, 2010, which was an additional twenty-two days. Soper argues, therefore, that he was "held per statute for a total of one hundred and sixty two (162) days prior to sentencing instead of the seven (7) days that it erroneosly [sic] granted him backon [sic] April 22[,] 2010." Appellant's Brief at 6.

The State argues that the court did not abuse its discretion in denying Soper's motion. Specifically, the State argues that Soper has waived his challenge to the denial because he has failed to present an adequate record clearly showing the alleged error, that Soper waived his arguments on appeal "because he is seeking different relief than that sought from the trial court," and that an examination of the record shows that Soper is not entitled to any additional jail time credit. Appellee's Brief at 5.

Initially, we note, as the State argues, that Soper did not argue in his motion for jail time credit filed with the trial court that he was entitled to 162 days of credit, and he may not present that argument on appeal. See Washington v. State, 808 N.E.2d 617,

625 (Ind. 2004) (noting that "a trial court cannot be found to have erred as to an issue or argument that it never had an opportunity to consider"). Further, resolution of Soper's arguments on appeal would require consideration of factors outside the face of the judgment, namely, the dates Soper was confined prior to sentencing in connection with the proceedings below. As noted above, a motion to correct erroneous sentence is "available only to correct sentencing errors clear from the face of the judgment." Robinson, 805 N.E.2d at 794. Soper's argument on appeal, even if it had been presented in his motion to the trial court, would not have been properly presented by way of a motion to correct erroneous sentence.

With respect to the argument presented in Soper's motion for jail time credit related to any discrepancy between the abstract of judgment, which indicated that Soper was confined prior to sentencing for seven days, and the plea agreement, we note that the Indiana Supreme Court recognized that Marion County, where Soper was convicted, "does not issue judgments of conviction" and held that "the trial court's abstract of judgment will serve as an appropriate substitute for purposes of making the claim" of an incorrect calculation of credit time. Neff, 888 N.E.2d at 1251.

Resolution of the issue presented in Soper's motion would necessarily require consideration of factors outside the face of the judgment, namely, the contents of his plea agreement. Soper's argument was not properly presented by way of a motion to correct erroneous sentence. See Robinson, 805 N.E.2d at 794. As a result, we cannot say that the court abused its discretion by denying Soper's motion to correct erroneous sentence on this issue. See Jackson v. State, 806 N.E.2d 773, 774 (Ind. 2004) (holding that the

trial court properly denied the defendant's motion to correct erroneous sentence and noting that a motion to correct erroneous sentence is available only to correct sentencing errors clear from the face of the judgment); Murfitt v. State, 812 N.E.2d 809, 810-811 (Ind. Ct. App. 2004) (holding that the trial court properly denied the defendant's motion for credit time where the alleged calculation error required consideration of matters outside the face of the sentencing judgment and noting that the claim was not presented by way of a petition for post-conviction relief); see also Bauer v. State, 875 N.E.2d 744, 746 (Ind. Ct. App. 2007) (noting that the defendant's claims required consideration of matters in the record outside the face of the judgment and accordingly they are not the types of claims that are properly presented in a motion to correct erroneous sentence), trans. denied.

For the foregoing reasons, we affirm the denial of Soper's motion for jail time credit without prejudice to his right to seek post-conviction relief.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.