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IN THE
COURT OF APPEALS OF INDIANA

THOMAS ROBERTS,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A04-0904-CR-190
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
The Honorable Amy Barbar, Magistrate
Cause No. 49G02-9710-CF-150126

July 16. 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Thomas Roberts, *pro se*, appeals the amount of Class I jail time credit applied to his sentence.

We affirm.

ISSUE

Whether the trial court abused its discretion in denying Roberts' motion to correct erroneous sentencing.

FACTS

On June 24, 1999, Roberts was sentenced to fifty-five years for a murder conviction. Prior to the sentencing, Roberts had served 628 days in jail under Class I status.[1] At the sentencing hearing, the trial court applied 628 days to the fifty-five-year sentence as the "number of days confined prior to sentencing."

On November 20, 2008, Roberts requested a grievance form from the Indiana Department of Correction (DOC) to challenge the amount of his awarded jail time credit. That same day, the DOC denied Roberts' request, informing him that he must "go through the courts." (App. 17).

On January 23, 2009, Roberts filed a motion to correct erroneous sentencing. On February 19, 2009, the trial court denied the motion.

DECISION

[1] Ind. Code § 35-50-6-3(a).

Roberts contends that the trial court abused its discretion in denying his motion to correct an erroneous sentence. We disagree.

Pursuant to Indiana Code section 35-50-6-3(a), an inmate of Class I status is awarded one day of jail time credit for each day imprisoned or confined awaiting trial or sentencing for a crime. An allegation of inaccurate applied jail time credit is equivalent to a motion to correct erroneous sentence. *Brattain v. State*, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002). We review a trial court's decision on such a motion solely for abuse of discretion, and we defer to the trial court's factual findings. *Id.* A trial court has abused its discretion when its "decision is against the logic and effect of the facts and circumstances before it." *Id.*

A defendant who believes he has been erroneously sentenced may file a motion to correct the sentence pursuant to Indiana Code section 35-38-1-15. Such a motion may only be filed to correct a sentence that is "erroneous on its face." *Robinson v. State*, 805 N.E.2d 783, 786 (Ind. 2004). Generally, we only review sentencing judgments, not abstracts of judgment; however, when appealing a sentence from a county that does not regularly issue sentencing judgments, such as Marion County, the abstract of judgment will suffice for purposes of filing a motion to correct an erroneous sentence. *Neff v. State*, 888 N.E.2d 1249, 1252 (Ind. 2008). A sentencing judgment that does not specify jail time credit "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." *Robinson*, 805 N.E.2d at 792.

In *Neff*, our Supreme Court explained the proper manner of applying pre-sentence Class I credit, stating, "[w]hen an offender is sentenced and receives credit for time served, earned credit time, or both, that time is applied to the new sentence *immediately*, before application of prospective earned credit time, in order to determine the defendant's earliest release date." 888 N.E.2d at 1251. The *Neff* opinion includes a model of the correct calculation. *Id.* at 1251-52.

Using the *Neff* model, Roberts' sentence would be calculated as follows.

Calculation using the *Neff* model

55-year sentence	20,075	days
Time served prior to sentencing	- 628	days
Class I credit earned at sentencing	- 628	days
Time left to serve	18,819	days
Time to serve with Class I credit	9,410	days

Assuming that Roberts remains in Class I while at the DOC, he would need to serve one-half of his remaining sentence before being eligible for early release. This calculation would give Roberts a projected early release date of April 4, 2025,[2] as determined by the trial court. On that date, Roberts will have served exactly one-half the court-ordered executed sentence, reflecting his early release date provided he remains in Class I credit status. In determining the projected early release date, the trial court applied Class I credit time to the *entire* sentence, including the 628 pre-sentence days.

[2] This court notes that Roberts' current projected release date is now earlier than April 4, 2025, presumably due to credit received in addition to his Class I credit, which is not an issue challenged in this case. Thus, we will limit our discussion to Roberts' Class I credit and the projected released date calculations made at the time of the alleged sentencing error.

Therefore, Roberts received all the Class I credit time to which he was entitled prior to sentencing.[3]

In its order denying Roberts' motion to correct erroneous sentencing, the trial court referred to Exhibit A, which apparently refers to the DOC's calculation of his jail time credit and which Roberts has failed to provide in his appendix. The trial court opined that the DOC followed the guidelines of the *Neff* model in calculating Roberts' pre-sentence jail credit time, which yielded the same projected early release date of April 4, 2025.

Because Roberts has failed to show that his Class I credit had been miscalculated prior to him being sentenced to the DOC, we cannot say that the trial court's decision to deny his motion was "against the logic and effect of the circumstances before it." *Brittain*, 777 N.E.2d at 776. Therefore, we affirm the trial court's denial of Roberts' motion to correct erroneous sentencing.

Affirmed.

BAILEY, J., and ROBB, J., concur.

[3] As the State correctly notes, Roberts was sentenced prior to the presumption announced in *Robinson*; however, he has "received the benefit of that presumption." State's Br. at 5.