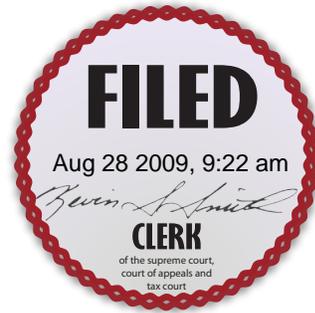


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JASON WOOLEMS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 82A05-0904-CR-227
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Tornatta, Judge
Cause No. 82D02-0705-FB-471

August 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Jason Woolems, pro se, appeals from the trial court's order denying his petition to amend the abstract of judgment and his motion for declaratory judgment. Woolems presents two issues for review:

1. Whether the trial court erred when it denied his request to amend the abstract of judgment to show an award of jail time credit.
2. Whether the court erred when it denied Woolems' request for declaratory judgment regarding his consecutive sentences.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 31, 2007, Woolems was arrested and, the following day, appeared at an initial hearing after being charged with two counts of Dealing in Methamphetamine, as a Class B felony, and one count of Maintaining a Common Nuisance, as a Class D felony in Cause No. 82D02-0705-FB-471 ("FB-471"). The court appointed a public defender to represent Woolems, and on June 5, Woolems posted cash bail and was released from jail.

On December 14, 2007, Woolems pleaded guilty to maintaining a common nuisance, as a Class D felony, pursuant to a negotiated plea agreement. The court approved the plea agreement and dismissed the other two charges. On January 23, 2008, the court sentenced Woolems to three years in the Indiana Department of Correction, to be served at the Vanderburgh County Community Corrections Complex ("VCCC") "on work release and consecutive to [the] sentence imposed on [Woolems] this date in Cause 82D02-0707-FB-611." Appellant's App. at 7.

On August 21, 2008, the State filed a “petition and affidavit of probable cause for revocation of VCCC alleging fee arrearage.” Id. at 6. On August 28, the State filed a second “petition and affidavit of probable cause for revocation of VCCC[.]” Id. at 5. The court found that probable cause existed and issued a bench warrant for Woolems. On November 14, the court held an initial hearing on the petitions to revoke probation and appointed counsel to represent Woolems. On December 17, Woolems admitted the allegations in the petitions. At the disposition hearing on January 14, 2009, the court granted the petition to revoke probation and sentenced Woolems to thirty months executed. The court awarded Woolems “124 days of credit previously served, plus good time.” Id. at 4.

On March 4, 2009, Woolems filed a pro se petition for earned credit time.¹ In response, on March 4, the court made the following entry in the Chronological Case Summary (“CCS”):

Court having considered petition for earned credit time notes days [Woolems] received from 5/25/07 to 6/9/07, he was given credit in Cause Number 82D02-0707-FB-611. The Court minute of 1/23/08 states [Woolems] is to receive zero days credit in this case, as all credit time was assessed in Cause 82D02-0707-FB-611. Accordingly, his petition is denied.

Id. at 3. On March 25, Woolems filed a pro se petition to amend abstract of judgment and a motion for declaratory judgment. In the petition, Woolems sought credit for time served in jail and on work release before the revocation of his probation. The trial court denied the petition and the motion as follows:

¹ This petition is not in the record on appeal.

Comes now the court and denies the petition to amend abstract of judgment and motion for declaratory judgment because court previously considered his motion for earned credit time which is addressed in the court's minute [entry] of 3/4/09 and the court's sentence in Cause No. 82D02-0810-FD-897 which states it is to be served consecutive[] to the sentence imposed in Cause 82D02-0705-FB-471.

Id.² Woolems now appeals.

DISCUSSION AND DECISION

Issue One: Credit Time

Woolems contends that the trial court erred when it did not award him credit for time served in FB-471. In particular, he argues that the trial court should have given him credit for time served from the date of his arrest on May 31, 2007, to the date he posted bail on June 5, 2007.³ We cannot agree.

We initially observe that pro se litigants are held to the same standard as trained legal counsel and are required to follow procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2005), trans. denied. It is an appellant's duty to provide a record that reflects the error alleged. Williams v. State, 690 N.E.2d 162, 176 (Ind. 1987). To the extent the record is inadequate, it results in waiver of the issue. Id.

Here, Woolems contends that the trial court erred when it refused to amend the abstract of judgment to reflect an award of credit for time that he served following his arrest and before trial. Indiana Code section 35-50-6-3 provides that "[a] person assigned

² The record of appeal contains no separate written orders on Woolems' post-sentencing pleadings.

³ In his petition to amend abstract of judgment, Woolems argued that he was entitled to credit for time served from his arrest on May 25, 2007, until he posted bond on June 15, 2007. Next to the latter date is the handwritten notation "June 9th[.]" Appellant's App. at 12. We consider only the credit time Woolems seeks on appeal, which falls within the time requested in his petition.

to Class I earns one (1) day of credit time for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.” But Woolems sought the award of credit time by asking the court to amend the abstract of judgment. Our supreme court

has construed the word “judgment” in [Indiana Code Section 35-38-3-2(b)] to refer to the phrase “judgment of conviction” in [Indiana Code Section 35-38-3-2(a)] and thus to require the inclusion of designated information only in the judgment of conviction, a copy of which must be provided by the trial court to the Department [of Correction] as receiving authority.

Robinson v. State, 805 N.E.2d 783, 794 (Ind. 2004). The court noted further that “[i]t is the court’s judgment of conviction and not the abstract of judgment that is the official trial court record and which thereafter is the controlling document.” Id. (emphasis added). Thus, the trial court did not err when it refused to issue a new abstract of judgment because a new abstract of judgment would not have aided Woolems in receiving an adjustment to his sentence based on the grant, if any, of his request for credit time.

The State argues that Woolems has waived his appeal from the denial of credit time because he did not timely appeal from the court’s March 4 denial of his pro se petition for earned credit time but instead appealed from the pro se petition to amend the abstract of judgment, which requested identical relief. In support, the State observes that the relief requested in Woolems’ petition for earned credit time, “appears to be the same as the relief sought in his petition to amend abstract of judgment.” Appellee’s Brief at 7. But neither Woolems nor the State has included a copy of the petition for earned credit time in the record on appeal. The State is correct that Woolems did not timely appeal from the trial court’s March 4 order. But without a copy of the petition for earned credit

time in the record, we cannot determine whether the relief sought in the petition to amend the abstract of judgment duplicates the relief requested in the petition for earned credit time.⁴

Issue Two: Declaratory Judgment

Woolems contends that the trial court erred when it did not grant his request for declaratory relief. But in his motion for declaratory judgment, Woolems presented the following question to the trial court: “Should [the] sentence imposed in [FB-471] be “completed” before service of [the] sentence imposed in [C]ause [N]o. 83D02-0810-FD-00897 begin[s], or can said sentence be served at the same time?” Appellant’s Brief at 15 (emphasis in original). Without more, Woolems’ motion could be interpreted as a request to serve his sentences concurrently as opposed to consecutively. Such a request for executory or coercive relief, lacking any request for a declaration of rights, does not present appropriate grounds for declaratory relief. See Ind. Code § 34-14-1-1 (granting courts power to declare rights, status, and other legal relations). As such, the trial court did not err when it denied the request for declaratory judgment.

On appeal, Woolems explains that Indiana Department of Correction personnel have told him that, upon completing his sentence in FB-471, he will be paroled in that case while simultaneously serving his consecutive sentence in Cause No. 83D02-0810-FD-00897 (“FD-897”). Woolems clarifies on appeal that he seeks to know whether being on parole in one case while remaining incarcerated in another case is permissible for

⁴ Even if Woolems had timely appealed from the trial court’s March 4 order denying his request for credit time from May 31 to June 5, 2007, we observe that the Chronological Case Summary in FB-471 shows that the court denied the request for credit time because that time had already been awarded against the sentence to be served in 82D02-0707-FB-611. Woolems cannot receive double credit for the same time served in two separate cases.

consecutive sentences. In answer, we observe that an inmate may pass his parole following one sentence while serving time on a consecutive sentence. See Mills v. State, 840 N.E.2d 354, 360 (Ind. Ct. App. 2006).

Affirmed.

KIRSCH, J., and BARNES, J., concur.