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IN THE
COURT OF APPEALS OF INDIANA

STANLEY BRYANT,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A02-0901-CR-77
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
Cause No. 49G04-9406-CF-79781

September 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Stanley Bryant appeals the trial court's denial of his motion to correct erroneous sentence. For our review, Bryant raises a single issue, whether the trial court abused its discretion when it refused to correct the abstract of judgment to include credit time in addition to the jail time Bryant served prior to his sentencing. Concluding Bryant is entitled to credit time that is not reflected on the abstract of judgment, we remand for the trial court to correct the abstract of judgment.

Facts and Procedural History

Bryant was sentenced to an aggregate term of sixty years as a result of his 1994 convictions for robbery, a Class B felony, and carrying a handgun without a license, a Class D felony, and a finding that Bryant is an habitual offender.[1] The abstract of judgment prepared by the trial court at the time of sentencing indicates that Bryant was confined for 308 days prior to sentencing but makes no mention of whether Bryant is entitled to credit time in addition to the 308 days he served.

On December 24, 2008, Bryant filed an offender grievance with the DOC, requesting the credit time be applied to his sentence. The DOC denied Bryant's grievance, stating "Jail time credit is a court issue." Id. at 11. On January 13, 2009, Bryant filed a motion to correct erroneous sentence with the trial court. On January 27, 2009, the trial court denied Bryant's motion finding that Bryant failed to show he exhausted all administrative remedies and "the trial court lacks the statutory authority to award Petitioner the relief he seeks." Id. at 26. Bryant now appeals.

[1] On March 20, 2003, the trial court modified Bryant's sentence on the robbery conviction from forty years to thirty-five years. Neither party explains the sentence modification, however, the reduction is noted on Bryant's sentence detail form. See Appellant's Appendix at 9.

Discussion and Decision

I. Standard of Review

We review a trial court's decision on a motion to correct an erroneous sentence for an abuse of discretion. Brattain v. State, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002).

II. Credit Time

Indiana Code section 35-38-3-2 requires a trial court to provide the DOC certified copies of the judgment of conviction and sentence for a convicted person, which must include "the amount of credit, including credit time earned, for time spent in confinement before sentencing." If the sentence is erroneous on its face, the mistake does not render the sentence void. Ind. Code § 35-38-1-15. Rather, the trial court shall correct the sentence upon a motion to correct sentence. Id. A challenge that a sentence does not include credit time for time served prior to sentencing may be brought by a motion to correct sentence. Robinson v. State, 805 N.E.2d 783, 788 (Ind. 2004). However, prior to filing a motion to correct sentence, a petitioner must first exhaust the remedies available through the DOC's grievance process. Neff v. State, 888 N.E.2d 1249, 1252 (Ind. 2008).

Normally, "a motion to correct sentence may not be used to seek correction of claimed errors in an abstract of judgment." Robinson, 805 N.E.2d at 794. However, as our supreme court pointed out in Neff, sentences from Marion County present a special circumstance because the trial court does not issue judgments of conviction. 888 N.E.2d at 1251. As a result, a motion to correct a sentence issued in Marion County may be based on an abstract of judgment alone. Id.

In Robinson, our supreme court addressed the common error made by trial courts of omitting reference to credit time in addition to time served prior to sentencing by creating a presumption that:

> Sentencing 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 [DOC] automatically to award the number of credit time days equal to the number of pre-sentence confinement days. In the event of any pre-sentence deprivation of credit time, the trial court must report it in the sentencing judgment. Because the omission of the statutory credit time entitlement is thus corrected by this presumption, such omission may not be raised as an erroneous sentence.

805 N.E.2d at 792 (footnote omitted). By extension, the Robinson presumption applies to the abstract of judgment for sentences, such as this one, from Marion County. Therefore, because the trial court made no specific mention of any deprivation of credit time for Bryant's pre-sentence confinement, the presumption automatically awards Bryant 308 days of credit time. In light of the presumption, the trial court did not abuse its discretion by denying Bryant's motion to correct sentence because no correction was necessary.

However, in reviewing the DOC's sentence detail form for Bryant, the form clearly states that Bryant is entitled to only 308 days of jail time credit. See Appellant's App. at 9. In addition, the calculation of Bryant's pre-release date, which assumes Bryant will receive Class 1 credit for each day he serves of his sentence, does not take into account the 308 days of pre-sentence time served, let alone the additional 308 days of credit time.[2] Bryant attempted to remedy the calculation error through the DOC's

[2] We also point out the sentence detail form indicates Bryant's aggregate sentence is only thirty-five years. The trial court order modifying Bryant's sentence is not in the record, therefore, we do not know exactly how the sentence was modified except for the comment in the sentence detail that the sentence was "modified from 40 to 35

grievance process to no avail. Therefore, we remand this case to the trial court to revise and deliver to the DOC an amended abstract of judgment that precisely indicates the length of Bryant's sentence and his entitlement to 308 days of credit time in addition to 308 days of pre-sentence time served

Conclusion

Bryant is entitled to the 308 days of credit time in addition to the time he served prior to sentencing. Therefore, we remand to the trial court to amend its abstract of judgment in light of this opinion and to deliver the amended abstract of judgment to the DOC.

Remanded.

DARDEN, J., and MATHIAS, J., concur.

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yrs on 03-23-03." Id. However, we find it unlikely the trial court would modify Bryant's sentence from a total of sixty years to thirty-five years.