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APPELLANT PRO SE:

KENNETH WINSTON
Pendleton, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General of Indiana
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KENNETH WINSTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0906-PC-504
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G23-0706-FA-112311

October 6, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Kenneth Winston argues that the trial court erred by failing to indicate in the abstract of judgment that he had earned 303 days of good time credit. Finding that the trial court indicated the full amount of credit time Winston had earned in the judgment of conviction, we affirm.

FACTS

On June 18, 2007, the State charged Winston with class A felony dealing in cocaine, class B felony possession of cocaine, two counts of class A misdemeanor resisting law enforcement, and class A misdemeanor battery. On April 14, 2008, Winston pleaded guilty to class B felony dealing in cocaine. That same day, the trial court held a sentencing hearing and sentenced Winston to six years imprisonment. The abstract of judgment notes that Winston was confined for 303 days prior to sentencing.

On February 23, 2009, Winston filed a pro se motion to correct erroneous sentence, arguing that the trial court had erred by failing to award him 303 days of good time credit in addition to 303 days of credit for presentence confinement. On March 5, 2009, the trial court entered an Order of Judgment of Conviction and Sentence, which specified that Winston is to serve six years imprisonment and that he is entitled to 303 days for presentence confinement <u>and</u> 303 days for class one credit time. Appellant's App. p. 30.

On April 3, 2009, Winston acknowledged the March 5 order and asked that the trial court prepare an amended abstract of judgment. The Department of Correction (DOC) informed Winston that he will not receive 606 days of credit time until the trial

court prepares and enters an amended abstract indicating that Winston is entitled to 303 days for presentence confinement and 303 days for good time credit. On May 4, 2009, the trial court denied Winston's motion to correct erroneous sentence and request for an amended abstract, stating as follows:

> 1. On April 14, 2008 [Winston] was sentenced by the court to the following: Count I, six (6) years executed; and was given credit time for 303 days confinement prior to sentencing.
>
> 2. It is presumed that [Winston] is entitled to 303 days for time served prior to sentencing and 303 days class 1 credit time.
>
> 3. "Sentencing judgments that report only days spent in pre-sentence confinement and fail to expressly designate the credit time earned shall be understood by the courts and by the Department of Corrections [sic] automatically to award the number of credit time days equal to the number of pre-sentence confinement days." Robinson v. State, 805 N.E.2d 783[, 792] (Ind. 2004).
>
> 4. The abstract of judgment properly states the number of days of incarceration prior to sentencing.
>
> 5. Issues relating to [Winston's] classification should be resolved with the [DOC] Facilities Classification and not with the court.

Id. at 32-33. Winston now appeals.

DISCUSSION AND DECISION

A motion to correct erroneous sentence should be granted only when the sentence is erroneous on its face. Robinson, 805 N.E.2d at 786.

Indiana Code section 35-38-3-2 requires the trial court's judgment to include "the amount of credit, including credit time earned, for time spent in confinement before sentencing." The time spent in presentence confinement applies toward a prisoner's

fixed term of imprisonment, and the amount of additional credit is primarily determined by the prisoner's credit time classification. Robinson, 805 N.E.2d at 789. A prisoner is initially assigned to Class I,[1] and earns one day of credit time for each day he is imprisoned for a crime of confined awaiting trial or sentencing. Id. Our Supreme Court concluded that Indiana Code section 35-38-3-2 requires "that a trial court's judgment of conviction separately include both the amount of time spent by the defendant prior to imposition of sentence and also the amount of credit time earned in accordance with the defendant's credit time class." Id.

The Robinson court also held that a trial court is required to include the amount of credit earned for presentence confinement and that this calculation is more than a mere recommendation that the DOC may choose to follow or ignore. Id. at 791-92. That said, however, "this credit time . . . is subject to modification thereafter by the [DOC] pursuant to statutory procedures." Id. at 792.

Although acknowledging that trial courts are required to include the amount of the defendant's presentence confinement time and the amount of credit time earned, our Supreme Court held that "[s]entencing 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." Id.

[1] "[C]redit time earned under Class I and that earned for educational achievements is sometimes described as 'good time' credit because such credit is conditioned on the absence of bad conduct." Robinson, 805 N.E.2d at 790.

In Robinson, as in this appeal, the trial court's judgment of conviction properly indicated the amount of credit due to the defendant for (1) his presentence confinement and (2) his credit time class. The abstract of judgment, however, noted only the number of days the defendant had spent imprisoned while awaiting trial and sentencing. Our Supreme Court observed that the abstract of judgment is a form issued by and for the convenience of the DOC, noting that it is unclear from the form what type of information the DOC was seeking regarding credit time. Regardless, the form requests only one number: "No. of days confined prior to sentencing[.]" Id. at 793; Appellant's App. p. 27.

Ultimately, our Supreme Court held that

> the "sentence" that is subject to correction under this procedure [via Indiana Code sections 35-38-3-2 and 35-38-1-15] means the trial court's judgment of conviction imposing the sentence and not the trial court's entries on the [DOC's] abstract of judgment form. It 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. Therefore, a motion to correct sentence may not be used to seek corrections of claimed errors or omissions in an abstract of judgment.

Robinson, 805 N.E.2d at 794. Thus, the Robinson court found that the defendant therein was not entitled to relief because the judgment of conviction accurately included all of the credit time he had earned.

Here, likewise, although the abstract of judgment includes only the number of days Winston spent in presentence confinement, the judgment of conviction accurately indicates that he is entitled to 303 days of credit for presentence confinement and 303 days for class one credit time. If the DOC has failed to abide by the authority cited

herein and refuses to give Winston his earned credit time, he must attempt to redress the matter with the DOC and exhaust all administrative remedies before seeking relief from a court. Neff v. State, 888 N.E.2d 1249, 1252 (Ind. 2008). Therefore, the trial court did not err by denying his motion to correct erroneous sentence.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.