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FILED
Oct 26 2009, 8:34 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

DONALD R. CARLIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A05-0906-CR-351
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WAYNE CIRCUIT COURT
The Honorable David A. Kolger, Judge
Cause No. 89C01-0108-CF-065

OCTOBER 26, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

Donald Carlin, *pro se*, appeals from the denial of his motion to correct erroneous sentence. At issue is the good time credit to which Carlin was entitled for 361 days of pretrial incarceration.

In February, 2004, Carlin pled guilty to dealing in cocaine, a Class B felony. The court sentenced Carlin to eleven years imprisonment and ordered the sentence to run consecutively to a sentence in a different cause number. The court noted that Carlin was given credit for time served of 361 days. On August 14, 2007 the court amended the judgment and order of February 13, 2004, *nunc pro tunc* to reflect that Carlin was awarded 361 days for time served in jail before trial and an additional 361 days of good time credit. On April 24, 2009, Carlin filed a motion to correct erroneous sentence seeking to secure the 361 days of good time credit for a total award of 722 days jail time credit. The trial court stated the issue had been resolved by its entry of August 14, 2007 and denied the motion as moot. Carlin appeals.

In response to continuing problems concerning the award of good time credit for pretrial incarceration, our Supreme Court in *Robinson v. State*, 805 N.E.2d 783, 792 (Ind. 2004), adopted the following presumption:

> Sentencing judgments that report only days spent in presentence confinement and fail to expressly designate credit time earned 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. In the event of any pre-sentence deprivation of credit time, the trial court must report it in the sentencing judgment.

Regardless of whether the defendant's appeal seeks to challenge the sentencing judgment or the abstract of judgment, the presumption applies and the result is the same. *Washington v. State*, 805 N.E.2d 795, 796 (Ind. 2004). Thus, it clearly appears for two separate reasons that Carlin was entitled to and was awarded 361 days credit for time served in jail and an additional 361 days of good time credit. It follows that the court did not err in denying Carlin's motion.

One further point, however, bears discussion. Carlin argues that the Department of Correction (DOC) has failed to properly credit him with his pretrial good time credit in computing his "Earliest Possible Release Date." In *Neff v. State*, 888 N.E.2d 1249, 1251 (Ind. 2008), the Indiana Supreme Court recognized that the DOC establishes such a date for defendants who are incarcerated. The court concluded that if the DOC miscalculated a defendant's earliest release date, a court would not grant relief unless the defendant showed that he had exhausted his opportunities within the DOC offender grievance process. *Id.* at 1252.

In the instant case it appears that Carlin filed a grievance with the DOC. The response denying his grievance is in the record. *See* Appellant's App. at 27. The response clearly states that Carlin was credited with [only] 361 days of jail time credit. In view of our discussion herein, that was clearly in error. We are confident, however, that upon receipt of our opinion herein the DOC will proceed to correct this error without the need of further proceedings.

The judgment of the trial court is affirmed.

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