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# IN THE
# COURT OF APPEALS OF INDIANA

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| TROY BURGE, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 56A03-1006-CR-331 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE NEWTON SUPERIOR COURT
The Honorable Daniel J. Molter, Judge
Cause No. 56D01-0104-CF-8

**October 26, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Troy Burge appeals the trial court's denial of his motion for credit time and time served. Although it is not entirely clear, Burge is apparently arguing that all of the time he served in various causes in Indiana must count—and be applied to—the sentence that was imposed in the instant conviction in Newton County. Burge also seemingly maintains that the time he served in Michigan should be applied to credit time in Indiana. Concluding that the trial court properly denied Burge's motion for credit time and time served, we affirm.

## FACTS

On April 11, 2001, Burge was charged with burglary, a class C felony, theft, a class C felony, and criminal mischief, a class D felony, under cause number 56D01-0104-CF-0008 (CF-8 Cause) in Newton County. Thereafter, Burge entered into a plea agreement with the State, whereby he agreed to plead guilty to the burglary charge in exchange for dismissal of the remaining counts. It was also agreed that Burge would serve an eight-year sentence concurrently with a pending sentence in Jasper County (CF-34 Cause), with credit for time served. At the guilty plea hearing that commenced on July 24, 2002, it was further agreed that Burge would received eighty-nine days of credit time.

Burge was also serving concurrent sentences in a number of other cases in other counties[1] while he was incarcerated on the Cause CF-8 Cause. Those offenses included

[1] Burge was serving time on unrelated offenses in Jasper, Newton, LaPorte, LaGrange, and Starke Counties.

five counts of burglary, two counts of theft, three counts of receiving stolen property, burglary, and car theft. Burge successfully moved for a change in credit time and a reassessment of his executed sentences in several of the counties where he was sentenced. Burge also acknowledges that he had been convicted and sentenced for various offenses that he committed in Michigan.

On February 18, 2009, Burge moved to correct the allegedly erroneous sentence[2] that was imposed in the CF-8 Cause. The trial court subsequently denied the motion, concluding that Burge had failed to state a claim on which relief could be granted. Burge filed at least eight additional motions, requesting that the trial court reconsider the amount of credit time in the CF-8 Cause. The trial court denied all of those motions.

It also appears from the record that Burge had escaped from custody in Indiana in August 2003, and was not returned until September 3, 2008. As a result, Burge was not serving time in Indiana for any sentence for nearly five years. And while Burge successfully moved for a change in credit time regarding some of the offenses that he had had committed in other counties, it is not clear from the record whether those counties were aware of the fact that Burge was an escapee or how those circumstances might have affected credit time calculations.

Burge now appeals, following the trial court's denial of his motion for credit time and time served that he filed on June 4, 2010.

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[2] Burge's motion is not included in the record.

## DISCUSSION AND DECISION

When reviewing the denial of a motion to correct an erroneous sentence, we will "defer to the trial court's factual findings and review its decision only for an abuse of discretion." Newsom v. State, 851 N.E.2d 1287, 1289 (Ind. Ct. App. 2006). However, we review the trial court's legal conclusions de novo. Id.

In accordance with Indiana Code section 35-50-6-3, a person imprisoned for a criminal offense or confined awaiting trial or sentencing earns one day of credit time for each day that he is imprisoned for a crime or confined awaiting trial or sentencing. The defendant's pretrial credit is dependent upon pretrial confinement and the pretrial confinement being a result of the criminal charge for which the sentence is being imposed. Stephens v. State, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000). Each court is responsible only for crediting time in confinement as a result of the charge for which the court is sentencing the defendant. Dolan v. State, 420 N.E.2d 1364, 1373 (Ind. Ct. App. 1981).

In light of the above, only the time that Burge has served on the CF-8 Cause will count toward his credit for the sentence on that charge. Stephens, 735 N.E.2d at 284. Finally, we note that time spent as an escapee does not count as time served. Hendrixson v. Lash, 258 Ind. 550, 553, 282 N.E.2d 792, 793-94 (1972).

Although Burge seemingly asserts that the time he served on the Michigan convictions should count toward his release dates in Indiana, we have observed that sentences to penal institutions of different jurisdictions are cumulative and not concurrent. Perry v. State, 921 N.E.2d 525, 527-28 (Ind. Ct. App. 2010). In Perry, we

observed that "there is no right to serve concurrent sentences for different crimes in the absence of a statute so providing, and that concurrent sentences may be ordered only when they are to be served at the same institution." Id. at 527. In fact, "a defendant is not even entitled to credit on his Indiana sentence while he is incarcerated in another jurisdiction for a totally different offense." Id. As a result, the time that Burge may have served in Michigan is not applied toward the credit time that he receives in Indiana.

Finally, we note that Burge neglects to point out that he was an escapee. However, the record demonstrates that Burge had escaped in August 2003, and was not returned to custody until September of 2008. Appellee's Supp. App. p. 4. Moreover, Burge does not suggest how those five years should have impacted any credit time calculation. For all of these reasons, we conclude that the trial court properly denied Burge's motions regarding his credit time and the sentence that was imposed in the CF-8 Cause.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.