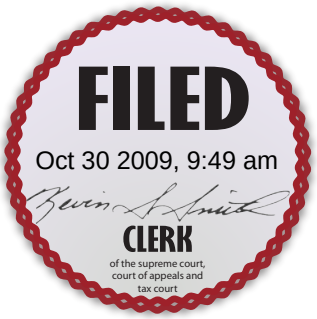
Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE
COURT OF APPEALS OF INDIANA

RICHARD WELCH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 05A02-0905-PC-447
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BLACKFORD CIRCUIT COURT
The Honorable Dean A. Young, Judge
Cause No. 05C01-0306-FC-26

October 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Richard Welch appeals the denial of his motion to correct erroneous sentence. We affirm.

FACTS AND PROCEDURAL HISTORY

Welch was convicted of Class C felony battery and was found to be an habitual offender. On January 26, 2004, he was sentenced to an aggregate sentence of twenty years. The abstract of judgment shows he was confined for 203 days before sentencing.

On February 20, 2009, Welch filed a motion to correct erroneous sentence. He requested that the trial court issue a new judgment of conviction and abstract of judgment showing he was entitled to 203 days of actual confinement and 203 of earned credit time. The motion was denied on April 21, 2009.

DISCUSSION AND DECISION

Pursuant to Ind. Code § 35-38-3-2(b)(4), a sentencing order must include "the amount of credit, including credit time earned, for time spent in confinement before sentencing."

> An inmate who believes he has been erroneously sentenced may file a motion to correct the sentence pursuant to I.C. § 35-38-1-15:
>
> > If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.
>
> We have held that such a motion may only be filed to address a sentence that is "erroneous on its face." *Robinson* [*v. State*, 805 N.E.2d 783, 786 (Ind. 2004)] (citation omitted). Other sentencing errors must be addressed via direct appeal or post-conviction relief. *Id.* An allegation by an inmate that the trial court has not included credit time earned in its sentencing is

> the type of claim appropriately advanced by a motion to correct sentence. *Id.* at 788. In *Robinson*, we adopted a presumption 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 Department of Correction automatically to award the number of credit time days equal to the number of pre-sentence confinement days." *Id*. at 792.

Neff v. State, 888 N.E.2d 1249, 1251 (Ind. 2008).

Welch supports his argument with his abstract of judgment. A motion to correct erroneous sentence must be based on the information contained in the formal judgment of conviction, and not from an abstract of judgment. *Robinson*, 805 N.E.2d at 794. However, because Marion County historically has issued only abstracts of judgment, a motion to correct erroneous sentence may be based on the abstract of judgment in Marion County. *Neff*, 888 N.E.2d at 1251. Welch alleges Blackford County follows the same practice.

Regardless, Welch is not entitled to relief because the presumption in *Robinson* corrects any error in the omission of the credit time. *See Robinson*, 805 N.E.2d at 792 ("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 Department of Correction automatically to award the number of credit time days equal to the number of pre-sentence confinement days."). Therefore, the judgment of the trial court is affirmed.

Affirmed.

CRONE, J., and BROWN, J., concur.