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FILED
Dec 17 2009, 8:54 am
CLERK
of the supreme court, court of appeals and tax court

APPELLANT PRO SE:

**CHESTER RADFORD**
Pendleton, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**
Attorney General of Indiana

**MICHAEL GENE WORDEN**
Deputy Attorney General
Indianapolis, Indiana

# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| CHESTER RADFORD, | ) | |
| | ) | |
| Appellant-Petitioner, | ) | |
| | ) | |
| vs. | ) | No. 49A05-0905-CR-290 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Respondent. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Eichholtz, Judge
Cause No. 49G23-0701-FA-14947

**December 17, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Chester Radford, pro se, appeals the trial court's denial of his motion to correct erroneous sentence.

We affirm.

## ISSUE

Whether the trial court abused its discretion in denying Radford's motion to correct erroneous sentence.

## FACTS

On August 21, 2007, the trial court sentenced Radford to concurrent sentences of ten years for the lesser-included offense of dealing in cocaine or narcotic drug as a class B felony;[1] 545 days for resisting law enforcement as a class D felony;[2] and one year for the mistreatment or interference with a law enforcement animal as a class A misdemeanor.[3] That same day, the Marion Superior Court entered the abstract of judgment, which showed that Radford had served 208 days in jail prior to sentencing. The abstract of judgment, however, did not specify an amount of earned credit time.

On or about February 5, 2009, Radford filed a formal grievance through the Department of Correction's offender grievance program. He complained that he had not been credited with earned credit time, and therefore, sought to have 208 days of earned

[1] Ind. Code § 35-48-4-1.

[2] I.C. § 35-44-3-3.

[3] I.C. § 35-46-3-11.

credit time applied toward his sentence. The DOC denied his request on February 7, 2009.

On March 13, 2009, Radford filed a motion to correct erroneous sentence, seeking "an Amended 'Judgment of Conviction' and Order of Commitment, including a new Abstract of Judgment, . . . showing [that he] is entitled to [208] actual days of confinement prior to be being sentenced and an equal number of [208] for credit time he earned in presentence confinement." (App. 2). The trial court denied Radford's motion on March 27, 2009.

DECISION

Radford asserts that the trial court abused its discretion in denying his motion to correct erroneous sentence. Specifically, he argues that he is "entitled to an order ensuring that he receives Class I credit time for [208] actual days of confinement awaiting trial and sentencing." Radford's Br. at 3.

A motion to correct erroneous sentence "may only be filed to address a sentence that is 'erroneous on its face.'" *Neff v. State*, 888 N.E.2d 1249, 1251 (Ind. 2008) (quoting *Robinson v. State*, 805 N.E.2d 783, 786 (Ind. 2004)). "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.* We review a trial court's decision on such a motion for abuse of discretion. *Newsom v. State*, 851 N.E.2d 1287, 1289 (Ind. Ct. App. 2006).

Generally, "a motion to correct an erroneous sentence may only arise out of information contained on the formal judgment of conviction, and not from an abstract of judgment." *Neff*, 888 N.E.2d at 1251. Marion County, however, does not issue judgments of conviction. Thus, "the trial court's abstract of judgment will serve as an appropriate substitute for purposes of making the claim." *Id.*

Pursuant to Indiana Code section 35-50-6-3(a), "[a] person assigned to Class I earns one (1) day of credit time for each day the person is imprisoned for a crime or confined awaiting trial or sentencing." Where, such as in this case, the abstract of judgment does not specify an amount of earned credit time, "the presumption shall be that the inmate is a Class I offender and has earned an amount of credit time equal to the amount of time already served." *Young v. State*, 888 N.E.2d 1253, 1254 (Ind. 2008). Accordingly, Radford is presumed to have earned 208 days of credit time for the 208 days he was incarcerated awaiting trial or sentencing.[4] Thus, the trial court properly denied his motion to correct erroneous sentence. *See id.* (finding that the denial of a motion to correct erroneous sentence is proper where the presumption that an offender is entitled to earned credit time equal to served credit time applies). We therefore find no abuse of discretion.

Affirmed.

KIRSCH, J., and MAY, J., concur.

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[4] In fact, we note that the DOC's "credit calculation detail" indicates that Radford's projected release date is January 25, 2012. Thus, it appears that he earned, and was credited, 208 days of Class I credit time. (App. 4).