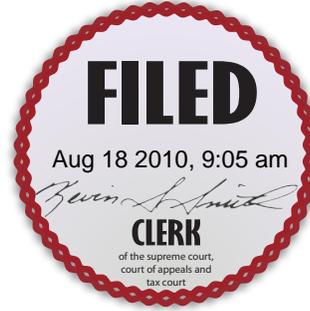


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

ATTORNEYS FOR APPELLEE:

ALVINO PIZANO
South Bend, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ALVINO PIZANO,)

Appellant-Defendant,)

vs.)

No. 45A04-1003-PC-220

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0801-PC-2

August 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Alvino Pizano challenges the post-conviction court's calculation and assignment of credit time he earned while being held on a parole violation warrant and an arrest for child molesting. We affirm.

FACTS AND PROCEDURAL HISTORY

On February 10, 2004, Pizano was released to a two-year period of parole as part of his sentence on a drug-dealing charge. On May 18, 2005, he was arrested for child molesting ("cause no. 66"). As that arrest was apparently considered a parole violation,¹ the parole board issued a warrant on May 23 to hold Pizano. On February 10, 2006, the parole period ended and the warrant was lifted. On July 26, 2006, Pizano posted bond on the child molesting charge and was released from jail. On March 17, 2007, Pizano was arrested on other charges ("cause no. 143"), and on April 27, 2007, Pizano was sentenced to consecutive terms for the two cause numbers.

The post-conviction court determined Pizano was entitled to credit time for his incarceration from May 18 to May 23, 2005, from February 10 to July 25, 2006, and from March 18 to April 27, 2007, but denied him credit for the time from May 23, 2005, to February 10, 2006. Pizano filed a petition for post-conviction relief asserting he was entitled to additional credit time.

¹ We acknowledge an arrest, without more, is not necessarily a parole violation. *See, e.g., Pierce v. Martin*, 882 N.E.2d 734, 739 (Ind. Ct. App. 2008) ("Pierce's parole revocation could not be based upon his arrest alone. The Parole Board had to find that the arrest was reasonable and find probable cause to believe that Pierce violated a criminal law"). As Pizano's arguments turn on whether the violation was dismissed or the parole period expired, we do not address the validity of the determination there was a violation.

DISCUSSION AND DECISION

Pizano challenges the post-conviction court's calculation of credit time. He believes he is entitled to additional credit time against cause no. 66 for the period when he was incarcerated on the parole violation warrant, *i.e.*, from May 23, 2005, through February 10, 2006.

Post-conviction proceedings are civil proceedings, and a defendant must establish his claims by a preponderance of the evidence. *Stevens v. State*, 770 N.E.2d 739, 745 (Ind. 2002). The defendant is appealing a negative judgment, so to the extent his appeal turns on factual issues, he must convince the reviewing court that the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. *Id.* In other words, he must convince us there is no way within the law that the court below could have reached the decision it did. *Id.* We do not defer to the post-conviction court's legal conclusions, but do accept its factual findings unless they are clearly erroneous. *Id.* at 746. In determining whether the judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses. *State v. Parham*, 913 N.E.2d 770, 772 (Ind. Ct. App. 2009). Rather, we consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence. *Id.*

Pizano desires additional pre-trial credit pursuant to Ind. Code § 35-50-6-3.²

² That section provides:

(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.

Determination of pretrial credit depends on (1) pretrial confinement, and (2) the pretrial confinement *being a result of the criminal charge for which a sentence is being imposed.* *Muff v. State*, 647 N.E.2d 681, 683 (Ind. Ct. App. 1995) (emphasis added).

Pizano argues the trial court improperly credited the time he was incarcerated between May 23, 2005, and February 10, 2006, against his parole violation, when instead it should have been credited against the sentence imposed in cause no. 66. Pizano’s argument is premised on evidence he characterizes as showing his “parole violation was dismissed.” (Appellant’s Br. at 9.) However, to find in Pizano’s favor would require us to reweigh the evidence that was before the post-conviction court, which we may not do. *See Parham*, 913 N.E.2d at 772.

The State notes Pizano was released to parole February 10, 2004, and “Pizano’s period of parole ended on February 10, 2006 and the warrant was lifted.” (Br. of Appellee at 2.) It supports that statement with a citation to a parole department document that includes the notations “subject completed 2 yrs of parole 2/10/2006” and “Discharge effective 2/10/06.” (App. at 72.) The post-conviction court found he was entitled to credit against his sentence in cause no. 66 for time served after that date.

(b) A person assigned to Class II earns one (1) day of credit time for every two (2) days the person is imprisoned for a crime or confined awaiting trial or sentencing.

(c) A person assigned to Class III earns no credit time.

(d) A person assigned to Class IV earns one (1) day of credit time for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.

Pizano directs us to the following evidence the violation was “dismissed.” A document captioned, “Parole Board’s Notice of Filing” was filed in the Lake Superior Court on January 20, 2009, in connection with this post-conviction action, and served as notice to the court of the parole board’s compliance with an order that it forward documents concerning Pizano’s parole revocation. In that document the Board says, “there is no ‘transcript regarding the petitioner’s parole revocation’ because the allegation was dismissed on June 12, 2007 . . . [t]he petitioner was discharged retroactive to February 10, 2006.” (*Id.* at 59-60.)

Pizano next points to an unsigned document dated June 15, 2007, which is captioned “Evidence Relied Upon and Findings of Fact – Parole Revocation Hearing.” (*Id.* at 71.) That document says Pizano’s “original two year period of parole expired on 2/10/06.” It later says the parole violation should be “dismissed,” but that appears to be a reference to a parole violation subsequent to the one that is determinative of Pizano’s entitlement to credit time in the case before us.

Finally, Pizano notes testimony at his post-conviction relief hearing on August 18, 2009, where the court asked the State, “Was the parole violation dismissed, ultimately?” (*Id.* at 202.) The State replied, “Yes.” (*Id.*) The court asked, “Then he wasn’t serving the parole violation. It was dismissed, as opposed to resolved, because he served enough time. Am I incorrect in how I’m viewing that?” (*Id.*) The State replied, “No. He had served enough time.”

Despite the confusion caused by the probation department's use of imprecise terminology throughout this record, it is apparent there was evidence to support the trial court's determination Pizano's two-year parole ended February 10, 2006, and his parole violation was not "dismissed" for any reason other than the expiration of the two-year term. We therefore cannot find clearly erroneous the post-conviction court's determination "[t]he sentence for the parole violation on the narcotics charge was served from February 10, 2004 to February 10, 2006" and the days Pizano served "[f]rom May 23, 2005 to February 10, 2006, were credited toward the parole violation." (*Id.* at 16.)

In *Dolan v. State*, 420 N.E.2d 1364, 1373 (Ind. Ct. App. 1981), we explained that a defendant is allowed credit for time "confined awaiting trial or sentencing," but such credit applies only to the sentence *for the offense for which the presentence time was served*:

Any other result would allow credit time for time served on wholly unrelated offenses. Under the criminal justice system, once convicted, the defendant must serve the sentence imposed for the offense committed. Credit time allowed by legislative grace toward a specific sentence clearly must be for time served for the offense for which that specific sentence was imposed.

Id. There was evidence to support the finding Pizano was confined during the period in question because of his parole violation on the drug-dealing charge and not because of the child molesting charge in cause no. 66. The post-conviction court therefore could properly find the time Pizano served for the violation of his parole, which lasted until the two-year parole period expired February 10, 2006, could not be credited to the sentence for the 2007 child molesting conviction.

The post-conviction court's credit time determination was not clearly erroneous and we accordingly affirm.³

Affirmed.

BAILEY, J., and BARNES, J., concur.

³ We acknowledge Pizano made a number of additional allegations of error, but almost all depend on the premise his probation violation was "dismissed." As it was not "dismissed," we need not address those allegations of error.

Pizano does assert the post-conviction court "had no authority to rule that Mr. Pizano was serving a sentence for a parole violation from May 23, 2005 to February 10, 2006 and not credit time toward his sentence under [cause no. 66]" because that determination "is entrusted to I.D.O.C. administrators." (Appellant's Br. at 24.) As Pizano offers no legal analysis or citation to authority to support that allegation, we are unable to address it. *See Nealy v. American Family Mut. Ins. Co.*, 910 N.E.2d 842, 849 (Ind. Ct. App. 2009) (Ind. Appellate Rule 46(A)(8)(a) requires an argument "contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on." Non-compliance with that rule results in waiver of the argument on appeal).