



Daniel Portee appeals the trial court's award of credit for time served. Portee raises one issue, which we restate as whether the trial court erred when it gave Portee twenty-five days of credit for time served. We reverse and remand.

The relevant facts follow. On October 10, 2006, a jury found Portee guilty of intimidation a class D felony<sup>1</sup> and being an habitual offender.<sup>2</sup> The same day the trial court revoked Portee's bond and ordered a presentence investigation report (PSI).<sup>3</sup> The sentencing hearing was originally set for November 6, 2006, but was reset for one week later on November 13, 2006. The trial court entered a judgment of conviction on November 13, 2006, sentencing Portee to one and one-half years in the Department of Correction for each count. During the sentencing hearing, the trial court asked if there

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<sup>1</sup> Ind. Code § 35-45-2-1 (Supp. 2006).

<sup>2</sup> Ind. Code § 35-50-2-8 (Supp. 2005).

<sup>3</sup> Portee included a copy of the presentence investigation report on white paper in his appendix. See Appellant's Appendix at 83-89. We remind Portee that Ind. Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Ind. Administrative Rule 9(G)(1)(b)(viii) states that "[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." The inclusion of the pre-sentence investigation report printed on white paper in the appellant's appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part:

Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:

- (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential."
- (2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked "Not for Public Access" or "Confidential" and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

were any changes to be made to the PSI, and Portee said yes. Due to the week delay of the sentencing hearing, Portee pointed out that there should have been an increase of seven days credit for time served, for a total of thirty-five days. In response, the judge said “[y]es. You get more. Yes. Sure.” Appellant’s Appendix at 95. However, the judgment of conviction reflects that only twenty-eight days of credit for time served were given to Portee.

The issue is whether the trial court erred when it gave Portee twenty-eight days of credit for time served. Ind. Code § 35-38-3-2(b) (4) (2004) provides that the judgment [of conviction] must include: “the amount of credit, including credit time earned, for time spent in confinement before sentencing.”

Portee argues that the trial court erred by failing to afford him thirty-five days of credit for time served. The State agrees that Portee is entitled to more credit for time served. The State mentions that “it appears that [d]efendant was confined for thirty-five days before sentencing.” Appellee’s Brief at 3. The PSI was filed on October 30, 2006, and stated that Portee’s jail time credit would be from October 10, 2006 to November 6, 2006, for a total of twenty-eight days. Since the sentencing hearing was delayed until November 13, 2006, Portee is entitled to those seven days and should receive a total of thirty-five days credit for time served.

Given the State’s admission of miscalculation and the trial court’s comments during the sentencing hearing, we find that the trial court erred by giving Portee only twenty-eight days of credit for time served. See, e.g., Robinson v. State, 805 N.E.2d 783, 791 (Ind. 2004) (holding that Ind. Code § 35-38-3-2(b) unequivocally declares that the

trial court sentencing judgment “must include” the amount of credit earned for time spent in confinement before sentencing).

For the foregoing reasons, we reverse the trial court’s award of twenty-eight days of credit for time served and remand for the trial court to amend the judgment of conviction to reflect thirty-five days of credit for time served.

Reversed and remanded.

MAY, J. and BAILEY, J. concur