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**IN THE
COURT OF APPEALS OF INDIANA**

ARTURO A. ORTIZ,)
)
Appellant-Defendant,)
)
vs.) No. 90A04-1103-CR-114
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable David L. Hanselman, Sr., Judge
Cause Nos. 90C01-0708-FA-3, 90C01-0612-FC-34

August 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Arturo A. Ortiz, *pro se*, appeals the denial of his motion for jail time credit. Ortiz raises one issue, which we restate as whether the trial court abused its discretion in denying Ortiz's motion. We affirm.

Ortiz was convicted of child molesting as a class C felony under cause number 90C01-0612-FC-00034 ("Cause No. 34") and child molesting as a class B felony under cause number 90C01-0708-FA-00003 ("Cause No. 3"). According to the abstract of judgment for Cause No. 34, the court sentenced Ortiz to eight years and awarded jail time credit of six days. According to the abstract of judgment for Cause No. 3, the court sentenced Ortiz to twelve years, four years of which were ordered suspended, and awarded jail time credit of 564 days. The court ordered the sentences under Cause No. 34 and Cause No. 3 to be served concurrent with each other.

On September 30, 2010, Ortiz, *pro se*, filed a motion for amended abstract of judgment under both cause numbers in which he requested the court to award him additional jail time credit. Specifically, Ortiz argued in part: "The prison classification officials have applied the jail time credit to each sentence as if the sentences were consecutive to each other. Per policy and statute, the jail time credit days are additive in concurrent sentencing." Appellant's Appendix at 14. That same day, the court entered an order denying Ortiz's motion and finding in part that Ortiz in Cause No. 34 "was arrested on December 30, 2006, and bonded out on January 4, 2007, and is, therefore, only entitled to the 6 days credit in that cause number." *Id.* at 17. The order further found: "The 564 days credit time in [Cause No. 3] was recalculated and confirmed to be accurate and correct. Concurrent sentencing just means that the two case files are being

served at the same time. Concurrent sentencing does not mean that the sentences are identical.” Id.

On February 8, 2011, Ortiz, *pro se*, filed a motion for jail time credit requesting that the court award additional credit, arguing in part: “[Ortiz] believes the intention of this court was to serve these two sentences concurrently in full, but this will not happen if the jail time credit is applied individually to each sentence. [Ortiz] was awaiting trial/conviction/sentencing on both cause numbers for over a year’s time.” Id. at 19. Ortiz also filed a memorandum of law in support of his motion in which he asserted in part that he was “incarcerated in April 2008 on [Cause No. 3], where he stayed for over a year (564 days) as he awaited conviction and sentencing on this cause number and also for [Cause No. 34].”¹ Id. at 22. That same day, the court denied Ortiz’s motion.

The issue is whether the court abused its discretion in denying Ortiz’s motion for jail time credit. Ortiz argues that the trial court improperly denied his motion for jail time credit seeking to amend the abstract of judgment for Cause No. 34 “to reflect the actual days spent in confinement prior to sentencing for a total of 570 days rather than 6 days.” Appellant’s Brief at 4.

Ortiz’s motion is tantamount to a motion to correct erroneous sentence. See Brattain v. State, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002) (holding that a request for credit for time served was tantamount to a motion to correct erroneous sentence). We review a trial court’s decision on a motion to correct erroneous sentence “only for abuse

¹ In both his September 30, 2010 motion for amended abstract of judgment and his February 8, 2011 motion for jail time credit, Ortiz requested amended abstracts of judgments showing the total number of days of jail time credit and that “[t]he total would be 570 days (564 plus 6 days.)” Appellant’s Appendix at 15, 19.

of discretion.” Mitchell v. State, 726 N.E.2d 1228, 1243 (Ind. 2000), reh’g denied, abrogated on other grounds by Beattie v. State, 924 N.E.2d 643 (Ind. 2010). An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it. Myers v. State, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999). However, we will “review a trial court’s legal conclusions under a *de novo* standard of review.” Mitchell, 726 N.E.2d at 1243.

An inmate who believes he has been erroneously sentenced may file a motion to correct the sentence pursuant to Ind. Code § 35-38-1-15. Neff v. State, 888 N.E.2d 1249, 1250-1251 (Ind. 2008). Ind. Code § 35-38-1-15 provides:

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.

In Robinson v. State, the Indiana Supreme Court noted that a motion to correct erroneous sentence is available only when the sentence is “erroneous on its face.” 805 N.E.2d 783, 786 (Ind. 2004) (citations omitted). Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct erroneous sentence. See id. at 787. Sentencing claims that are not facially apparent “may be raised only on direct appeal and, where appropriate, by post-conviction proceedings.” Id. “Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the sentencing judgment, and the ‘facially erroneous’ prerequisite should henceforth be strictly applied” Id.

Here, although Ortiz included two abstracts of judgment under Cause Nos. 34 and 3 in his appendix, he failed to submit the formal judgments of conviction as required under Robinson. See Robinson, 805 N.E.2d at 794 (holding that “a motion to correct sentence may not be used to seek corrections of claimed errors or omissions in an abstract of judgment”). In Neff, the Indiana Supreme Court acknowledged that Marion County, Indiana, does not historically issue judgments of conviction due to its very high volume of criminal cases. Neff, 888 N.E.2d at 1251. For this reason, the Neff court deemed a trial court’s abstract of judgment an appropriate substitute for purposes of making the claim. Id. However, Ortiz’s convictions originated in Wells County, Indiana. There is no indication that Wells County issues only abstracts of judgment and not formal judgments of conviction. See Thompson v. State, 617 N.E.2d 576, 577 (Ind. Ct. App. 1993) (addressing an appeal from Wells County and observing that “[t]he guilty plea court accepted the plea, *entered judgments of conviction*, and, on March 30, 1990, sentenced Thompson according to the terms of the plea agreement”) (emphasis added), reh’g denied, trans. denied; State v. Culp, 433 N.E.2d 823, 824 (Ind. Ct. App. 1982) (addressing an appeal from Wells County and observing that “[a]fter a hearing the trial court granted the motion, *vacated the judgment of conviction*, and entered a finding of not guilty and judgment of acquittal for both charges of public intoxication”) (emphasis added), trans. denied. Therefore, the idea that “when a defendant files a motion to correct an erroneous sentence in a county that does not issue judgments of conviction . . . , the trial court’s abstract of judgment will serve as an appropriate substitute [for a formal judgment of conviction] for purposes of making the claim” does not apply. See Neff, 888

N.E.2d at 1251. The record before us contains only abstracts of judgment. As the Court held in Robinson, “a motion to correct sentence may not be used to seek corrections of claimed errors or omissions in an abstract of judgment.” Robinson, 805 N.E.2d at 794.

Even if we were to accept Ortiz’s abstracts of judgment, we would conclude that Ortiz’s claim must fail. Resolution of the issue presented in Ortiz’s motion would necessarily require consideration of factors outside the face of the abstracts of judgment, namely, the dates Ortiz was confined prior to sentencing in connection with the proceedings under Cause Nos. 34 and 3 as well as the dates Ortiz was arrested and released on bond. As noted above, a motion to correct erroneous sentence is “available only to correct sentencing errors clear from the face of the judgment.” Robinson, 805 N.E.2d at 794. Ortiz’s argument was not properly presented and as a result, we cannot say that the court abused its discretion by denying Ortiz’s motion to correct erroneous sentence. See Jackson v. State, 806 N.E.2d 773, 774 (Ind. 2004) (holding that the trial court properly denied the defendant’s motion to correct erroneous sentence and noting that a motion to correct erroneous sentence is available only to correct sentencing errors clear from the face of the judgment); Murfitt v. State, 812 N.E.2d 809, 810-811 (Ind. Ct. App. 2004) (holding that the trial court properly denied the defendant’s motion for credit time where the alleged calculation error required consideration of matters outside the face of the sentencing judgment and noting that the claim was not presented by way of a petition for post-conviction relief); see also Bauer v. State, 875 N.E.2d 744, 746 (Ind. Ct. App. 2007) (noting that the defendant’s claims required consideration of matters in the

record outside the face of the judgment and accordingly they are not the types of claims that are properly presented in a motion to correct erroneous sentence), trans. denied.

For the foregoing reasons, we affirm the denial of Ortiz's motion for jail time credit without prejudice to his right to seek post-conviction relief.

Affirmed.

BAKER, J., and KIRSCH, J., concur.