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**IN THE
COURT OF APPEALS OF INDIANA**

GARY ASHER,)

Appellant-Defendant,)

vs.)

No. 35A04-0706-CR-305

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Jeffrey R. Heffelfinger, Judge
Cause No. 35D01-0506-FD-117

December 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Gary Asher appeals the trial court's denial of his motion for credit time. Asher raises one issue, which we restate as whether the trial court abused its discretion in denying Asher's motion for credit time.¹ We affirm.

The relevant facts follow. In 2005, the State charged Asher with nonsupport of a dependent child as a class D felony. Asher pleaded guilty as charged, and on February 21, 2006, the trial court sentenced him to two years in the Indiana Department of Correction with 270 days executed and fifteen months of probation upon release. The trial court found that Asher had eight days credit for time served from November 13, 2005, to November 22, 2005.

On October 3, 2006, the State filed a petition to revoke Asher's probation. On December 12, 2006, the trial court held a hearing on the petition, and Asher admitted to violating his probation. The trial court ordered that Asher serve the balance of his suspended sentence. The trial court found that Asher had thirteen days of credit for time

¹ We remind Asher's counsel that Ind. Appellate Rule 46(A)(6) provides that the statement of facts "shall describe the facts relevant to the issues presented for review . . ." Although Asher's appeal concerns whether he received the proper credit time, his statement of the facts is simply a quotation of the State's petition to revoke his probation and does not include any facts relevant to his credit time issue. Similarly, Asher's statement of the case does not include any facts relevant to his credit time issue. See Ind. Appellate Rule 46(A)(5) (noting that the statement of the case shall describe "the course of the proceedings relevant to the issues presented for review"). Additionally, we remind Asher's counsel that Ind. Appellate Rule 50(C) requires that a table of contents in an Appellant's Appendix "shall specifically identify each item contained in the Appendix, including the item's date." The table of contents in Asher's Appendix merely lists the clerk's record as ranging from page 1 to page 133 of the Appendix. Pursuant to the appellate rule, a more detailed table of contents is required. This court has previously warned Asher's counsel regarding similar conduct. See Galvan v. State, __ N.E.2d __, No. 35A02-0706-CR-495 (Ind. Ct. App. 2007) (discussing previous violations and dismissing an appeal for flagrant violations of the appellate rules); Shuler v. State, No. 35A02-0707-PC-597 (Ind. Ct. App. 2007) (dismissing an appeal).

served from November 30, 2006, to December 12, 2006, but on December 20, 2006, the trial court issued a nunc pro tunc order finding that Asher had 148 days of credit time.

On March 2, 2007, Asher filed a motion for additional credit time, which the trial court denied without holding a hearing. On March 19, 2007, Asher filed a pro se notice of appeal, which the trial court interpreted as an appeal of the trial court's denial of Asher's motion for additional credit time.

On appeal, the issue is whether the trial court abused its discretion in denying Asher's motion for credit time.² Asher argues that, when the trial court revoked his suspended sentence, he should have been granted credit for 157 days of time served rather than 148 days.³ Specifically, Asher contends that he did not receive credit for pretrial time served from November 13, 2005, to November 22, 2005.

We first note that Asher did not present his motion for credit time argument by way of a petition for post-conviction relief. Rather, in essence, he filed a motion to correct sentence. See Murfitt v. State, 812 N.E.2d 809, 810 (Ind. Ct. App. 2004). In Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004), the Indiana Supreme Court

² Asher phrases the issue as whether the trial court abused its discretion in sentencing him for the probation revocation and does not mention his motion for additional credit time. We note that the trial court sentenced Asher for the probation revocation on December 12, 2006, and corrected the order on December 20, 2006. Asher did not file a timely appeal from that order. Moreover, Asher did not seek permission to file a belated appeal from that order under Ind. Post Conviction Rule 2. Rather, Asher filed a pro se motion for additional credit time on March 2, 2007, and then filed a timely notice of appeal. Thus, the issue on appeal is whether the trial court abused its discretion by denying the motion for additional credit time, not whether the trial court abused its discretion in sentencing Asher for the probation revocation. Despite this error, we will attempt to address Asher's argument regarding the credit time.

addressed the difference between a motion to correct erroneous sentence and a petition for post-conviction relief. The court held that a motion to correct erroneous sentence may only be used to correct sentencing errors that are clear from the face of the judgment. Robinson, 805 N.E.2d at 787. 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. Id. Sentencing claims that are not facially apparent “may be raised only on direct appeal and, where appropriate, by post-conviction proceedings.” Id.

Resolution of Asher’s credit time argument necessarily requires consideration of factors outside of the face of the judgment. As the State notes, to address Asher’s argument, it is necessary to know how long Asher served in the Indiana Department of Correction to determine how much credit he was entitled to receive versus how much credit he actually received.⁴ As noted above, a motion to correct erroneous sentence is “available only to correct sentencing errors clear from the face of the judgment.” Id. at 794. This argument is not properly presented by way of a motion to correct erroneous sentence (or a motion for additional credit time). As a result, we cannot say that the trial court abused its discretion by denying Asher’s motion for additional credit time. See, e.g., Murfitt, 812 N.E.2d at 811 (holding that the trial court properly denied the

³ In his reply brief, Asher claims that he is entitled to 159 days of credit for time served. See Reply Brief at 2-3.

⁴ Asher contends that he was released from the IDOC on July 8, 2006. However, in support of this assertion, Asher relies upon only his statements in his unsworn motion for additional credit time. The State correctly notes that there is “no evidence in the record, and certainly no documentation from DOC, as to when he was released from DOC after serving the executed portion of his sentence.” Appellee’s Brief at 4.

defendant's motion for credit time because such a claim must be presented by way of a petition for post-conviction relief).

For the foregoing reasons, we affirm the trial court's denial of Asher's motion for additional credit time.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur