

Case Summary

Appellant-Petitioner Robert McFarland appeals the denial of his Motion to Correct Erroneous Sentence. We affirm.

Facts and Procedural History

In 1995, McFarland was sentenced for convictions of Robbery,¹ as a Class A felony, and two counts of Attempted Murder.² On March 15, 1995, he was sentenced to concurrent sentences of forty-five years imprisonment on each count. The trial court gave McFarland 271 days of jail time credit but did not note whether he was entitled to earned credit time. The convictions and sentences were affirmed on direct appeal. McFarland v. State, No. 49A04-9506-CR-233 (Ind. Ct. App. Feb. 2, 1996).

On July 7, 2009, McFarland filed a grievance with the Department of Correction alleging that he had not been credited for his pre-sentence earned credit time. His grievance was denied with the explanation that his projected earliest release date calculation included the earned credit time. On July 30, 2009, McFarland filed a Motion to Correct Erroneous Sentence alleging that the Department of Correction failed to credit him for 271 days earned credit time. The trial court denied the motion, and this appeal ensued.

Discussion and Decision

Prisoners in Indiana are placed into a “class” for the purpose of earning credit time. Neff v. State, 888 N.E.2d 1249, 1250 (Ind. 2008). Pursuant to Indiana Code Section 35-50-

¹ Ind. Code § 35-42-5-1.

² Ind. Code §§ 35-42-1-1 and 35-41-5-1.

6-3, inmates in Class I earn one day of credit time for each day imprisoned, those in Class II earn one day of credit time for every two days, and inmates in Class III earn no credit time. Initially, every inmate is assigned to Class I but may be reassigned based on certain rule violations. Ind. Code § 35-50-6-4.

Indiana Code Section 35-38-3-2(a) requires trial courts to certify judgments of conviction and sentences to the “receiving authority.” Among other information, the sentencing order must include “the amount of credit, including credit time earned, for time spent in confinement before sentencing.” Ind. Code § 35-38-3-2(b)(4).

Pursuant to Indiana Code Section 35-38-1-15, an inmate who believes his sentence is erroneous may file a motion to correct erroneous sentence along with a memorandum of law supporting the defect in the original sentence. If the sentence is found to be incorrect, the sentence shall be corrected. Ind. Code § 35-38-1-15. Our Supreme Court has held that such motions are only to address a sentence that is “erroneous on its face.” 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 [erroneous] sentence.” Neff, 888 N.E.2d at 1251.

In Robinson, the Indiana Supreme Court adopted a presumption that “[s]entencing judgments that report only days spent in pre-sentence confinement and fail to expressly designate credit time earned shall be understood by courts and by the Department of Correction automatically to award the number of credit time days equal to the number of pre-sentence confinement days.” Robinson, 805 N.E.2d at 792. This presumption provided the

Department of Correction clarity in interpreting sentencing orders for purposes of calculating an inmate's earliest release date. Neff, 888 N.E.2d at 1252. Thus if an inmate believes that the Department of Correction had miscalculated his earliest release date, the inmate should first exhaust his opportunities within the Department of Correction offender grievance process. Id.

Here, McFarland claims that the Department of Correction failed to credit him for his credit time of 271 days earned prior to being sentenced. Before filing his motion to correct erroneous sentence, McFarland filed a grievance with the Department of Correction, which was denied. "When an offender is sentenced and receives credit for time served, earned credit time, or both, that time is applied to the new sentence *immediately*, before application of prospective earned credit time, in order to determine the defendant's earliest release date."

Id. (emphasis in original). The calculation of McFarland's earliest release date is as follows:

45-year sentence (x 365.25 to include leap years)	16,437 days
Time already served at sentencing	271 days
Earned Class I credit at sentencing	271 days
Time left to serve	<u>15,894 days</u>
Time to serve with Class I credit (half of days left)	7,947 days

This calculation provides McFarland with an earliest release date of December 16, 2016.³

This was the date recorded as McFarland's projected earliest release date in the records of the Department of Correction. Appellant's Appendix at 32. Therefore, the Department of

³ The record indicates that during his incarceration at the Department of Correction McFarland has earned educational credit. However, this is not reflected in our calculation as McFarland only challenges whether his pre-sentence earned credit time was correctly calculated.

Correction correctly calculated McFarland's original projected release date to include both his pre-sentence jail credit time and his earned credit time.

Affirmed.

BAKER, C.J., and ROBB, J., concur.