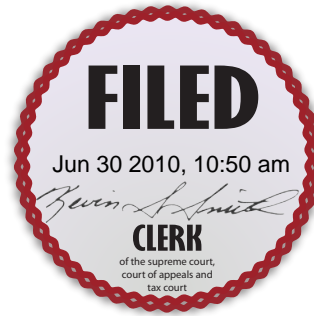


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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MICHAEL K. WILLIAMS,

Appellant-Petitioner,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0909-CR-438

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Thomas P. Stefaniak, Jr. Judge  
Cause No. 45G04-0804-FC-58

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**June 30, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Michael Williams appeals the trial court's denial of his motion to correct sentence. We affirm.

### **Issue**

The sole issue is whether the trial court properly denied Williams's motion to correct sentence, which sought an additional award of presentence jail credit time.

### **Facts**

Williams has not provided this court with a number of documents vital to his appeal, including the trial court's chronological case summary. Nevertheless, we glean the following facts. On October 18, 2008, Williams pled guilty to Class C felony forgery. The trial court entered a sentencing order on November 18, 2008, imposing a sentence of four years that was to be served consecutive to a sentence Williams was serving under a separate cause number. The trial court awarded no presentence jail credit time to Williams.

On March 16, 2009, Williams filed a motion to correct sentence, based on the trial court's failure to award any presentence jail credit time, which the trial court denied the same day. On April 21, 2009, the trial court denied Williams's motion to correct error. Apparently, Williams filed yet another motion, asking the trial court to reconsider its ruling, which it denied on August 28, 2009. Williams now appeals.

## Analysis

An inmate who believes he or she has been erroneously sentenced may file a motion to correct the sentence pursuant to Indiana Code Section 35-38-1-15. Neff v. State, 888 N.E.2d 1249, 1250-51 (Ind. 2008). That statute 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.

Ind. Code § 35-38-1-15. This type of motion may only be filed to address a sentence that is ““erroneous on its face.”” Neff, 888 N.E.2d at 1251 (quoting 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 sentence.” Id.

The State asserts that Williams’s failure to provide a more complete record with respect to his credit time claim ought to result in waiver on appeal. See Thompson v. State, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002). We also note that there would seem to be some question about the timeliness of this appeal; the trial court denied Williams’s motion to correct error from its original denial of his motion to correct sentence on April 21, 2009. Williams did not appeal that denial, but instead filed a motion to reconsider several months later, long after the thirty-day deadline for filing an appeal from the April

21, 2009 ruling had passed. See Davis v. State, 771 N.E.2d 647, 648 (Ind. 2002) (quoting Ind. Appellate Rule 9)).

In any event, the record available to us establishes that the trial court properly denied Williams's motion to correct sentence. The sentencing order plainly states that Williams's sentence was to be served consecutive to his sentence in a separate matter. "It has been observed on several occasions that we should avoid construing the credit time statutes as permitting a defendant to claim 'double or extra credit' for pre-sentencing confinement." Payne v. State, 838 N.E.2d 503, 510 (Ind. Ct. App. 2005). Specifically, as a general rule, where a defendant is incarcerated at the same time for multiple offenses and the sentences are ordered to be served consecutively, the defendant is entitled to credit against the aggregate total of the sentence, not against both sentences. See Corn v. State, 659 N.E.2d 554, 558-59 (Ind. 1995). To hold otherwise would effectively enable a defendant to serve the sentences concurrently, "a result the legislature could not have intended." Diedrich v. State, 744 N.E.2d 1004, 1006 (Ind. Ct. App. 2001).

Although the record is not clear whether Williams received proper credit in the other case consecutive to which his sentence in this case must be served, he has made no argument and presented no evidence that he did not receive it. Thus, he has failed to establish that he was entitled to any presentence jail credit time in the present case. See id. In other words, Williams's sentence is not erroneous on its face.

### **Conclusion**

The trial court properly denied Williams's motion to correct sentence. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.