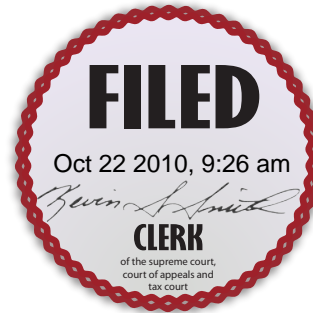


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM SEBASTIAN, JR.,)

Appellant,)

vs.)

STATE OF INDIANA,)

Appellee,)

No. 14A01-1001-CR-20

APPEAL FROM THE DAVIESS SUPERIOR COURT
The Honorable Mark R. McConnell, Special Judge
Cause No. 14D01-9812-CF-857

October 22, 2010

MEMORANDUM DECISION ON REHEARING – NOT FOR PUBLICATION

MATHIAS, Judge

William Sebastian, Jr. (“Sebastian”) has petitioned this court for rehearing in our memorandum decision in which we affirmed the trial court’s order revoking Sebastian’s probation. See Sebastian v. State, No. 14A01-1001-CR-20, 2010 WL 3250387 (Ind. Ct. App. Aug. 18, 2010), slip op. at 7. We also held that a portion of Sebastian’s sentence was an illegal indeterminate sentence and therefore instructed the trial court on remand to correct the illegal portion of the sentence in all relevant orders. Id. at 6-7. In his petition for rehearing, Sebastian claims that we should also have instructed the trial court on remand to indicate on the abstract of judgment the number of days he was confined prior to his probation revocation, so that he will receive the correct amount of credit time.

We first note that this issue was not directly presented as an independent claim of error in Sebastian’s initial appellant’s brief. Instead, it was presented in the form of a footnote at the end of Sebastian’s Statement of the Case which read:

The Abstract of Judgment does not include the number of credit days the trial court gave [Sebastian], but simply refers to the Revocation Order. However, the revocation order does not specify the number of days, either. It simply orders [Sebastian] be given credit for time served since the filing of the Petition to Revoke on March 3, 2008. [Sebastian] requests this Court to remand this to the trial court to issue and Amended Abstract noting on the Abstract the number of days credit [Sebastian] is entitled to so the Department of Corrections [sic] will account for those days.

Appellant’s Br. at 2, n.2.

Pursuant to Indiana Appellate Rule 46(A)(5), the Statement of the Case “shall briefly describe the nature of the case, the course of the proceedings relevant to the issues presented for review, and the disposition of these issues by the trial court or Administrative Agency.” Further, the footnote cited no case law, statute, or other

authority in support of Sebastian’s claim of error. See App R. 46(A)(8)(a) (“Each contention [in the argument] must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on[.]”).

Still, the State did respond to Sebastian’s claim at the end of its brief, also in a footnote, by stating:

It does appear that the abstract of judgment, as well as the order of revocation, are silent on the number of days confined prior to revocation. Those days should be included in one or both of these documents. See generally Robinson v. State, 805 N.E.2d 783 (Ind. 2004).^[1]

Appellee’s Br. at 7, n.2. Thus, the State has conceded that the trial court’s sentencing judgment or abstract of judgment should have included the number of days Sebastian was confined prior to revocation.²

We therefore grant Sebastian’s petition for rehearing and modify our original decision to further instruct the trial court on remand to indicate on the revocation order and abstract of judgment the number of days that Sebastian was confined prior to the revocation of his probation. Our original decision is otherwise affirmed in all other respects.

BRADFORD, J., concurs.

RILEY, J., votes to deny without opinion.

¹ In Robinson, our supreme court held that a trial court’s sentencing judgment must report both the number of days confined while imprisoned before sentence and also separately designate the credit time earned for the said period of confinement, subject to statutory modification by the Department of Corrections. 805 N.E.2d at 794.

² The State has not filed a response to Sebastian’s petition for rehearing.