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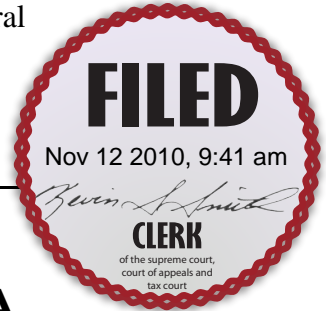
APPELLANT PRO SE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAVID LEE WRIGHT, )  
 )  
Appellant-Petitioner, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Respondent. )

No. 19A01-1003-PC-161

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APPEAL FROM THE DUBOIS SUPERIOR COURT  
The Honorable Mark R. McConnell, Judge  
Cause Nos. 19D01-9910-CF-928, 19D01-0004-CF-382 and 19D01-0011-CF-1409

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**November 12, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Petitioner, David Lee Wright (Wright), appeals the post-conviction court's denial of his petition for post-conviction relief.

We affirm.

## ISSUE

Wright raises two issues on appeal, which we consolidate and restate as the following single issue: Whether the post-conviction court properly denied Walker's petition for post-conviction relief which alleged that the sentence imposed pursuant to a modified plea agreement exceeded the sentence agreed upon in the agreement.

## FACTS AND PROCEDURAL HISTORY

On November 6, 2000, the State filed an Information in cause no. 19D01-0011-CF-1409 (CF-1409) charging Wright with manufacturing a schedule II controlled substance, a Class B felony. On February 9, 2001, Wright and the State entered into a plea agreement in this cause. On March 7, 2001, the trial court sentenced Wright in three different causes: CF-1409; cause no. 19D01-0004-CF-382 (CF-382); and cause no. 19D01-9910-CF-928 (CF-928). In each cause, the trial court sentenced Wright to ten years of imprisonment, with the sentences to run consecutively.

On September 10, 2001, Wright filed a petition for post-conviction relief in CF-1409, which was summarily denied by the post-conviction court on September 24, 2001. In December of 2003, we granted Wright permission to file a successive petition for post-

conviction relief in CF-1403, which was again denied by the post-conviction court on April 1, 2004.

On November 14, 2005, Wright filed a motion for modification of sentences. On October 18, 2007, Wright and the State entered into a modified plea agreement that encompassed CF-928, CF-382, and CF-1409. Under the terms of this modified plea agreement, the parties agreed that the sentence in CF-928 had been completed, that Wright would be permitted to serve the remaining 1460 days in CF-382 in work release, and that Wright's sentence in CF-1409 would be modified to ten years suspended to probation. In addition, the sentence in CF-1409 was to be served consecutively to the sentence imposed on CF-382.

On September 4, 2009, Wright filed a Motion to Comply with the modified plea agreement. The trial court held a hearing on the motion and discussed the fact that Wright had been unable to serve his remaining sentence in CF-382 on work release as set forth in the modified plea agreement because he was serving an executed sentence out of Perry County at the same time. At the conclusion of the hearing, all parties agreed that Wright had served the entire executed portion of his sentence in CF-1409 and all that remained of that sentence was his probation, as stipulated in the modified plea agreement, which was set to begin on October 18, 2007. In addition, Wright's probation period would be served concurrent with his Perry County sentence such that if Wright served ten years on the Perry County sentence, then he would complete his entire sentence on CF-1409 at the same time and he would not

serve any actual probation. On October 29, 2009, the trial court issued an amended abstract of judgment in CF-382, which indicated that he had completed that sentence.

On January 7, 2010, Wright filed the present petition for post-conviction relief. Two months later, on March 8, 2010, the post-conviction court denied his petition observing that “it was understood at the time of the modification [] that in order for Wright to actually serve his remaining time on work release and probation that his Perry County sentence would also have to be modified. To date Perry County has been unwilling to modify Wright’s sentence there.” (Appellant’s App. p. 12).

Wright now appeals. Additional facts will be provided as necessary.

#### DISCUSSION AND DECISION

Wright contends that the trial court abused its discretion when it denied his petition for post-conviction relief. Under the rules of post-conviction relief, the petitioner must establish the grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); *Strowmatt v. State*, 779 N.E.2d 971, 974-75 (Ind. Ct. App. 2002). To succeed on appeal from the denial of relief, the post-conviction petitioner must show that the evidence is without conflict and leads unerringly and unmistakably to a conclusion opposite that was reached by the post-conviction court. *Id.* at 975. The purpose of post-conviction relief is not to provide a substitute for direct appeal, but to provide a means for raising issues not known or available to the defendant at the time of the original appeal. *Id.* If an issue was available on direct appeal but not litigated, it is waived. *Id.*

Wright first claims that the terms of the modified plea agreement required him to serve 1460 days (730 days actual, if good time credit is earned) on work release. After he filed a motion to compel, the trial court rectified its error by crediting him the time that he served in prison instead of being on work release. In his petition for post-conviction relief, he now argues that the trial court erred by not enforcing the modified plea agreement as agreed upon.

Upon review of the record, we note that the modified plea agreement clearly specified that Wright was entitled to 1460 days (730 days actual if good time credit is earned) of work release in CF-382 so long as he remained eligible, but instead of being granted work release, Wright spent these days in jail. After receiving Wright's motion to compel, the trial court acknowledged its mistake and granted Wright credit time instead. During the hearing on the motion to compel, the trial court discussed the fact that even if the modified plea agreement had been properly implemented, Wright would still have served the work release in CF-382 in jail because he was serving an executed sentence out of Perry County at the same time. Moreover, during the hearing on the modified plea agreement on October 19, 2007, Wright was informed that in order to be able to be on work release and probation, his sentence out of Perry County would also have to be modified. Perry County never consented to a modification.

Second, Wright contends that the trial court miscalculated his jail time credit in CF-928. He asserts that

[w]hen you back [Wright's] sentence up 189 days from March 7, 2001, which is the date of sentencing on [CF-928], then [Wright]'s start date on that

sentence would be August 30, 2000, and with the one year Good Time Credit [Wright] earned by obtaining his G.E.D. and completing a Vocational Auto Body course, that then year sentence would have ended August 29, 2004 [and not March 1, 2005].

(Appellant's Br. p. 11).

With respect to CF-928, the modified plea agreement recognized that Wright had served 189 actual days (or 378 days good time credit) prior to sentencing on March 7, 2001. In addition, the modified plea agreement also awarded Wright credit for obtaining his G.E.D. and vocational training. It is well established that a defendant is entitled to credit for the time spent in confinement before sentencing. *See Robinson v. State*, 805 N.E.2d 783, 789 (Ind. 2004). However, this time is labeled as a "credit" towards a sentence; it is time applied to the new sentence immediately. *See Neff v. State*, 888 N.E.2d 1249, 1251 (Ind. 2008). Thus, Wright's argument is faulty where he argues that the credit time for the 189 days actually served prior to his sentencing on March 7, 2001 pushes the start date of his sentence back to August 30, 2000. Rather, the credit is applied towards the sentence incurred upon sentencing and is to be awarded to the sentence upon going forward. Therefore, the post-conviction court properly denied Wright's petition for post-conviction relief.

#### CONCLUSION

Based on the foregoing, we conclude that the post-conviction court properly denied Wright's petition for post-conviction relief.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.