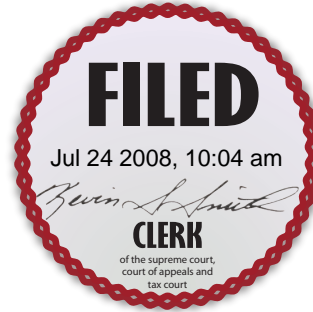


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RANDY D. HIX,)

Appellant-Defendant,)

vs.)

No. 49A02-0801-PC-22

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause No. 49G06-9610-CF-166651

July 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Randy Hix appeals the trial court's denial of his petition for credit time. Hix raises one issue, which we restate as whether the trial court properly denied Hix's request for additional jail time credit. We affirm.

The relevant facts follow. On October 30, 1996, the State charged Hix with burglary as a class B felony and receiving stolen property as a class D felony under Cause Number 49G06-9610-CF-166651 ("Cause No. 651"). On April 9, 1997, Hix entered a plea agreement in which he pled guilty to burglary as a class B felony.¹ On May 30, 1997, the trial court sentenced Hix to twenty years with six years executed, fourteen years suspended, and four years probation. On April 13, 1998, Hix filed a motion to have his probation transferred to Tennessee.² According to the chronological case summary, the trial court "RESPONDS, ORIGINAL COMMITMENT PERMITS TRANSFER TO TENNESSEE IF INTENSIVE OUTPATIENT PROGRAM LIKE SOBER LIFE ALTERNATIVES IS FOUND." Appellant's Appendix at 12.

On May 17, 2002, the probation department filed a notice of probation violation, and the trial court issued a warrant for Hix's arrest.³ On August 7, 2007, Hix was returned to an Indiana jail. On August 16, 2007, the trial court held a hearing on the probation violation, and Hix admitted the violation. The trial court revoked Hix's

¹ The record does not contain a copy of the plea agreement.

² The record does not contain a copy of this motion.

³ The record does not contain a copy of the notice of probation violation.

probation and ordered Hix to serve eight years. According to the chronological case summary, the trial court awarded Hix “17 days credit time.” Id. at 20.

On October 18, 2007, Hix filed a petition for jail credit time. Hix argued that he was entitled to 1,899 days of jail time credit, “which is the actual number of days spent in confinement while serving a 4/28/2002 Burglary charge filed under case # 4642002 for the State of Tennessee.” Id. at 24. Specifically, Hix alleged as follows:

Hix avers that he was serving a probation period for the State of Indiana under [Cause No. 651] prior to having the probation transferred to the Macon County, Tennessee Probation Department. While serving the transferred probation, Hix was charged and sentenced to six (6) years for a Burglary charge that occurred on 4-28-02 *See*: Ex. C. While serving this Tennessee commitment, for a Burglary conviction, Hix was officially served with an Arrest Warrant dated 5-17-02 by Honorable Judge Jane Magnus-Stinson for a probation violation *See*: Ex. B. Hix avers this is when he was officially served NOTICE OF PROBATION VIOLATION, thus, having a “Hold” placed on him, which prevents enrollment into various program(s) the department of correction allows for earning a time reduction to which other offenders have an entitlement to. Thus, Hix avers that the time of having the “HOLD” placed upon him, from 5-17-02 until 7-31-07 while serving the commitment period under case # 4642002 in Tennessee, reflects a difference of one thousand-eight hundred and eighty-two (**1882**) days, excluding the seventeen (17) days credit already accredited to Petitioner Hix while back in Indiana while in direct custody of the Marion County Sheriff awaiting the hearing on the probation violation.

Id. The trial court summarily denied Hix’s petition.

The sole issue is whether the trial court properly denied Hix’s request for additional jail time credit. We first note that Hix 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) (holding that a “Motion for Pretrial Credit for Time Served” was in essence a motion to correct sentence under Ind. Code § 35-38-1-15). In Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004), the Indiana Supreme Court 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. Id. 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 Hix’s credit time argument necessarily requires consideration of factors outside the face of the judgment. As noted above, a motion to correct erroneous sentence is “available only to correct sentencing errors clear from the face of the judgment.” Robinson, 805 N.E.2d 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 Hix’s motion for additional credit time. See, e.g., Murfitt, 812 N.E.2d at 811 (holding that the trial court properly denied the 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 Hix’s motion for additional credit time.

Affirmed.

DARDEN, J. and NAJAM, J. concur