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**IN THE
COURT OF APPEALS OF INDIANA**

MARCUS J. PERRY,)
)
Appellant-Petitioner,)
)
vs.) No. 49A02-0807-PC-593
)
STATE OF INDIANA,)
)
Appellee-Respondent.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0604-PC-067702

October 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Marcus J. Perry appeals the trial court's order denying his petition for educational credit time after Perry received his general educational development diploma (GED). Finding that the trial court made a mathematical error, we reverse and remand with instructions to amend the resentencing statement to reflect that Perry is entitled to 519 days of credit for time served and for the completion of the GED.

FACTS

On July 5, 2006, the trial court imposed a 1,460-day sentence on Perry after he pleaded guilty to class C felony robbery. Perry was to serve his time in the Marion County Community Corrections Program and was given eighty-three days of credit for time served prior to sentencing. Perry remained in the Marion County Jail for 183 days before a bed became available in community corrections. He was transferred to that program on January 3, 2007. Perry completed fifty-six days at the community corrections program, during which time he received his GED.

On February 27, 2007, Perry violated the conditions of his placement by failing to return to the program. A warrant was issued for his arrest and he was subsequently arrested on November 20, 2007. On December 6, 2007, the trial court held a hearing and found that Perry had violated the terms of his community corrections placement. The trial court ordered Perry committed to the Indiana Department of Correction (DOC) for the balance of his sentence, giving him 339 days of credit for time served, noting that the credit included "Comm[unity] Corr[ections] time; GED time cut and jail time prior to 12/6/07." Appellant's App. p. 15.

On March 11, 2008, Perry filed a pro se motion for jail time credit, evidently¹ arguing that the trial court had made a mathematical error and that he had not, in fact, received the required 183 days of educational credit time for completing his GED. The trial court denied Perry's motion on the same day, ordering as follows:

[Perry] claims he has not been properly granted jail time credit he is entitled to for obtaining his G.E.D. while serving a sentence on community corrections. A review of the record shows that at the time the Court found the Defendant in violation of his community corrections placement and committed him to the Department of Correction, he was given credit of 183 days for having obtained his G.E.D.

Appellant's Br. p. 7.² Perry now appeals.³

DISCUSSION AND DECISION

As we consider Perry's argument that the trial court made a mathematical error, we note that a petition for credit time is "tantamount to a motion to correct erroneous sentence." Brattain v. State, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002). In considering the trial court's ruling on such a petition, we defer to the trial court's factual findings and

¹ The March 11, 2008, motion for jail time credit is not included in the record on appeal. But Perry filed a subsequent motion for educational time credit on April 17, 2008, which is contained in the record herein and articulates the argument stated above. The trial court denied the April 17 motion on April 23, 2008, explaining that "[t]his issue was previously addressed in the Court's Order of March 11, 2008." Appellant's Br. p. 6. Thus, we infer that Perry raised the same educational credit time argument in both motions and will proceed accordingly.

² The March 11, 2008, order is not contained in the appellant's appendix; instead, it is only appended to his brief and consecutively paginated thereto. Consequently, when referring to this order, we will cite to Perry's brief rather than the appendix.

³ On September 12, 2008, this court issued an order directing Perry to show cause as to why the appeal should not be dismissed given that the notice of appeal had apparently been untimely filed. Perry responded, explaining that he had placed his notice of appeal in the DOC law library mail box on May 14, 2008, and that it was stamped as received by the Clerk's Office on May 20, 2008. Appellant's App. p. 5. Inasmuch as Perry is technically appealing the trial court's April 23, 2008, order, his notice of appeal was timely filed within the thirty-day limit set forth by Indiana Appellate Rule 9(A). Therefore, we will address his appeal.

review the decision for an abuse of discretion. Id. An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. Id.

Before getting to the substance of Perry's argument, we observe that the State's sole arguments on appeal relate to the sufficiency of the record establishing that Perry, in fact, completed an appropriate GED program and was otherwise qualified to receive educational credit time. See Ind. Code § 35-50-6-3.3 (setting forth the relevant requirements for educational credit time). These arguments are beside the point, however, inasmuch as the trial court necessarily found that Perry was entitled to receive credit for the completion of the GED. Indeed, it attempted to give Perry that credit in its initial sentencing order revoking Perry's community corrections placement, appellant's app. p. 15, and reaffirmed its belief that Perry had been given such credit when it denied his petition for credit time, appellant's br. p. 7. Nothing in the record suggests that the trial court abused its discretion in concluding that Perry was entitled to educational credit time, and we decline to second-guess the trial court in that regard.

Turning to Perry's argument, we observe that when the trial court resentenced Perry, it gave him 339 days of credit for time served in jail, time served in community corrections, and, ostensibly, for the completion of his GED. Before Perry was sentenced the first time, he spent eighty-three days in jail; after sentencing, he spent 183 days in jail awaiting an available bed in community corrections; he spent fifty-six days in the community corrections program; and he spent seventeen days in jail between his arrest for violation of the community corrections placement and his resentencing after the trial

court revoked his participation in that program. Thus, Perry was entitled to 339 days of credit solely for time served, and the trial court made a mathematical error by concluding that 339 days also included the requisite educational credit for the GED completion.

Indiana Code section 35-50-6-3.3(d)(1) provides that a person who completes a state of Indiana GED diploma is entitled to six months—or 180 days—of credit time. As noted above, the trial court concluded that Perry met all applicable requirements necessary to earn this credit time. Therefore, we reverse and remand with instructions that the trial court amend the resentencing statement to reflect that Perry is entitled to 519 days of credit for time served and for the completion of the GED.

The judgment of the trial court is reversed and remanded with instructions.

MATHIAS, J., and BROWN, J., concur.