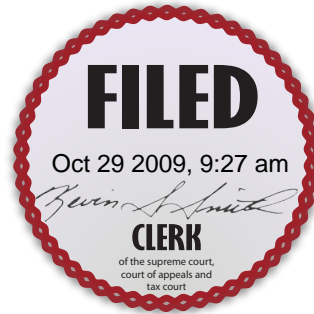


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CARLETON HOLT,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A02-0905-CR-486
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven J. Rubick, Judge Pro Tempore
Cause No. 49G01-9103-PC-36673

October 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Carleton Holt appeals the trial court's denial of his motion to correct erroneous sentence. Holt raises one issue, which we restate as whether the trial court abused its discretion by denying Holt's motion to correct erroneous sentence.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 19, 1991, Holt was arrested and subsequently charged with murder. Following a bench trial, the trial court found Holt guilty as charged. On October 17, 1991, the trial court sentenced Holt to fifty years. The trial court noted that Holt had served 212 days in jail prior to sentencing.

On March 16, 2009, Holt filed a grievance with the Department of Correction ("DOC") in which he asserted that he had not been credited with 212 days of earned credit time. The DOC denied Holt's grievance that same day. Thereafter, Holt filed his motion to correct erroneous sentence in which he again argued that he was entitled to 212 days of earned credit time. The trial court denied Holt's motion on March 31, 2009. Holt now appeals.

DISCUSSION AND DECISION

Holt argues that the trial court abused its discretion in denying his motion to correct erroneous sentence. We review a trial court's decision on a motion to correct erroneous sentence for abuse of discretion. *Brattain v. State*, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002). "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.*

Holt notes that he served 212 days in jail while he was waiting to be sentenced.

He concedes that he received credit for the 212 days he was actually incarcerated during this period, but contends that the DOC failed to credit 212 days of earned credit time to his sentence. Thus, Holt argues that he was entitled to 424 days of credit for the period that he was incarcerated prior to being sentenced but has only been awarded 212 days of credit.

Pursuant to Indiana Code section 35-50-6-3(a), an inmate, like Holt, who has been assigned Class I status is awarded one day of jail time credit for each day imprisoned or confined awaiting trial or sentencing for a crime. Thus, we agree with Holt that for the 212 days he was incarcerated prior to being sentenced, he is entitled to 212 days of earned credit time.

Generally, “a motion to correct erroneous sentence may only arise out of information contained on the formal judgment of conviction, and not from an abstract of judgment.” *Neff v. State*, 888 N.E.2d 1249, 1251 (Ind. 2008). Holt was convicted and sentenced in Marion County, which only uses an abstract of judgment rather than a formal judgment of conviction. In these situations, our Supreme Court has specified that “the trial court’s abstract of judgment will serve as an appropriate substitute for purposes of making the claim.” *Id.*

Here, Holt has included a copy of the abstract of judgment in his appendix, but it is largely unreadable. “It is Appellant’s duty to present an adequate record clearly showing the alleged error. Where he fails to do so, the issue is deemed waived.” *Thompson v. State*, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002) (quoting *Jackson v. State*, 496 N.E.2d 32, 33 (Ind. 1986)). However, Holt and the State both agree that the trial

court properly credited Holt for the 212 days he was incarcerated prior to sentencing but did not specify an amount of earned time credit. The chronological case summary (“CCS”) also supports this. *See Appellant’s App.* at 40-41 (“Defendant ordered committed to Department of Correction and given 212 days credit time.”). Because the CCS is consistent with the State and Holt’s assertion that the trial court credited Holt with 212 days of credit time, we will not deem the deficiency of the record in this regard to preclude our review.

Where, as in this case, the trial court notes the amount of time a defendant was incarcerated prior to sentencing but does not specify an amount of earned credit time, “the presumption shall be that the inmate is a Class I offender and has earned an amount of credit time equal to the amount of time already served.” *Young v. State*, 888 N.E.2d 1253, 1254 (Ind. 2008). Accordingly, Holt is presumed to have earned 212 days of credit time for the 212 days he was incarcerated prior to sentencing. Thus, the trial court properly denied Holt’s motion to correct erroneous sentence. *See id.* (finding that denial of motion to correct erroneous sentence is proper where presumption that offender is entitled to earned credit time equal to served credit time applies).

Even if we determined that the presumption did not apply in this case, we conclude that the DOC has credited 212 days of earned credit time to Holt’s sentence. In *Neff*, our Supreme Court explained the proper manner of applying pre-sentence Class I credit, stating, “[w]hen an offender is sentenced and receives credit for time served, earned credit time, or both, that time is applied to the new sentence immediately, before application of prospective earned credit time, in order to determine the defendant’s

earliest release date.” 888 N.E.2d at 1251. The *Neff* opinion includes a model of the correct calculation. *Id.*

Using the *Neff* model, Holt’s sentence would be calculated as follows:

50-year sentence	18,263 days ¹
Time served prior to sentencing	-212 days
Class I credit earned at sentencing	-212 days
	<hr/>
Time left to serve	17,839 days
Time to serve with Class I credit	8,920 days ²

This calculation would give Holt a projected initial early release date of March 18, 2016. Documents provided by the State from the DOC’s Offender Information System indicate that the DOC determined Holt’s initial projected release date would be March 18, 2016. *See Appellee’s Br.* at attachment p. 2. Thus, the DOC has properly credited 212 days of earned credit time to Holt’s sentence. We, therefore, conclude that the trial court did not abuse its discretion in denying Holt’s motion to correct erroneous sentence.

Affirmed.

NAJAM, J., and BARNES, J., concur.

¹ This calculation includes leap years.

² The actual number of days is 8,919.5, which would be rounded up to 8,920.