

STATEMENT OF THE CASE

Herman Bernard, pro se, appeals the trial court's denial of his motion for jail credit time.

We affirm.

ISSUE

Whether the trial court erred by denying Bernard's motion.

FACTS

On March 7, 2007, the State filed an information in this action charging Bernard with burglary as a class C felony and theft as a class D felony.¹ On March 9, 2007, the State filed an affidavit of probable cause; the trial court found probable cause and issued a warrant for Bernard's arrest. On August 8, 2007, Bernard was arrested. His initial hearing was conducted on August 10, 2007, and Bernard requested a speedy trial – with the trial court noting the “70th day” as “10/20/07.” (App. 18). On October 17, 2007, a plea agreement was filed with the trial court. The trial court accepted the plea agreement and Bernard's guilty plea; the theft charge was dismissed; and a judgment of conviction was entered. On October 31, 2007, the trial court ordered Bernard to serve a three-year executed sentence, with “jail credit 0808 to 103107 = 85 days.” (App. 20).

On March 24, 2008, Bernard filed his pro se motion for “additional jail time credit.” (App. 2). The motion noted that he had been awarded 85 days of jail time credit

¹ Bernard does not include the charging information in his Appendix. He does include therein a probable cause affidavit, and an amended probable cause affidavit, concerning a burglary and theft that occurred at Mercer Machine in Indianapolis on August 11, 2006. Hence, we assume that on March 7, 2007, the State charged that Bernard had committed the Mercer Machine offenses on August 11, 2006.

at the time of sentencing, alleged that he had been in “county jail Dept. Correction” from November 10, 2006 through his sentencing on October 31, 2007, and asserted that was “entitled to 356 days of jail time credit.” *Id.* The trial court denied his motion that same day.

DECISION

Bernard appeals the trial court’s denial of his motion for additional jail time credit. Thus, Bernard did not present his pre-trial credit time argument in a petition for post-conviction relief but rather in what is essentially a motion to correct erroneous sentence. *See* Ind. Code § 35-38-1-15. In *Robinson v. State*, 805 N.E.2d 783 (Ind. 2004), our Supreme court clarified that only sentencing errors that fail to comply with statutory authority and “are clear from the face of the judgment imposing the sentence” may be raised in a motion to correct sentence. *Id.* at 787. In *Neff v. State*, 888 N.E.2d 1249 (Ind. 2008), our Supreme Court recognized that Marion County, where Bernard was convicted, “does not issue judgments of conviction,” and held that “the trial court’s abstract of judgment will serve as an appropriate substitute for purposes of making the claim” of an incorrect calculation of credit time. *Id.* at 1251.

However, Bernard has not provided us with a copy of the abstract of judgment in this matter. Pro se litigants are held to the same standard as trained legal counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2005), *trans. denied*. Nevertheless, because the CCS is consistent with Bernard’s assertions as to the specifics of the sentence imposed, we will not deem the deficiency of the record in that regard to preclude our review.

Bernard's argument begins with his initial "Statement of Fact[]" that on September 8, 2006, he "was served with an arrest warrant for the charge of burglary" in this action. Bernard's Br. at 6. However, he fails to provide the required support for that assertion. See Ind. Appellate Rule 24(C) ("[a]ny factual statement" in appellant's brief "shall be supported by a citation to the page where it appears in the Appendix."). Moreover, the CCS clearly reflects that his arrest on the instant burglary charge occurred on August 8, 2007. Further, the date of Bernard's arrest is a matter not "clear from the face of the judgment imposing the sentence" that Bernard appeals. *Robinson*, 805 N.E.2d 787.

Bernard's argument also includes his contention that he is entitled to the additional jail time credit for "pretrial confinement which is a result of the" burglary charge underlying the appealed sentence. Bernard's Br. at 7 (citing *Willoughby v. State*, 626 N.E.2d 601, 602 (Ind. Ct. App. 1993)). Again, whether Bernard was confined for the Mercer Machine burglary in November of 2006, as he alleged in his motion to the trial court, cannot be determined "from the face of the judgment imposing the sentence." *Robinson*, 805 N.E.2d 787.

To reach the merits of Bernard's motion required consideration of matters outside the face of the sentencing judgment. Therefore, pursuant to *Robinson*, the trial court did not err in denying his motion. See *Murfitt v. State*, 812 N.E.2d 809, 811 (Ind. Ct. App. 2004) (affirming denial of motion to correct jail credit time when alleged calculation error required consideration of matters outside face of sentencing judgment).

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.