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**IN THE
COURT OF APPEALS OF INDIANA**

TERRANCE E. FIELDS,)

Appellant-Defendant,)

vs.)

No. 27A02-0806-CR-565

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause Nos. 27D01-0107-CF-90 and 27D01-0601-FA-20

December 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Terrance E. Fields,¹ pro se, appeals the trial court's order denying his motion to correct erroneous sentence. He raises two issues for review, which we consolidate and restate as whether the trial court erred when it denied Fields' motion. On cross-appeal, the State contends that we should dismiss Fields' appeal because he did not timely file his notice of appeal.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 23, 2002, Fields pleaded guilty to one count of Possession of Cocaine, as a Class C felony, in Cause Number 27D01-0107-CF-90 ("CF-90"). The trial court sentenced Fields to six years, with four years executed on home detention and two years suspended to probation. On January 27, 2006, police officers and members of the home detention office conducted a search of Fields' home and found cocaine in a pair of child's disposable underwear. As a result, Fields was arrested for dealing in cocaine. Fields was later found guilty of two counts of dealing in cocaine, as Class B felonies, in Cause Number 27D01-0601-FA-20 ("FA-20").

On June 11, 2007, the court found that Fields had violated the terms of his home detention and his probation in CF-90 because he had been in possession of an illegal substance. As a result of the violation, the court ordered Fields to serve the remaining fourteen months of his sentence in CF-90 and an additional two years in jail for having

¹ The appellant's last name and the name of the trial judge are not spelled consistently across the briefs and the appellant's appendices. We have adopted the spellings used by the trial judge in orders that he prepared.

violated the terms of his probation, consecutive to the sentence imposed in FA-20.² On April 29, 2008, Fields file a verified motion to correct erroneous sentence and for the issuance of an amended abstract of judgment. On the same date, the trial court denied that motion without a hearing.

On May 30, 2008, the court received Fields' notice of appeal, but the court found that the appeal was not timely filed. Fields then filed a motion to rescind the May 30, 2008, order, arguing that his motion to correct erroneous sentence should have been deemed filed on the date he had delivered it to prison officials for mailing. On June 17, 2008, the court granted Fields' motion to rescind its May 30, 2008, order, finding that Fields' notice of appeal was timely filed when it was mailed, pursuant to Indiana Appellate Rule 23. Fields' appeal now ensues.

DISCUSSION AND DECISION

Cross-Appeal

We first address the issue raised by the State on cross-appeal because it concerns this court's jurisdiction over Fields' appeal. Specifically, the State contends that Fields' appeal should be dismissed because he did not timely file his notice of appeal. In his reply brief, Fields asserts that his appeal was timely filed. We must agree with Fields.

² The abstract of judgment provides:

Defendant's participation in home detention is revoked and Defendant is ordered to serve the remaining fourteen months as straight time. In addition, Defendant's probation is revoked and Defendant is ordered to serve the previously suspended two years as straight time. Sentence is ordered served consecutively to sentence in [FA-20]. Defendant is granted zero days credit (Defendant was granted credit in [FA-20]) credit [sic] for time spent incarcerated awaiting disposition in this cause.

Fields is appealing from the trial court's April 29, 2008, order denying his motion to correct erroneous sentence. Fields' notice of appeal was due thirty days from the date of the trial court's order, or on May 29, 2008. See Ind. Appellate Rule 9(A). Fields' Appendix includes a page from the Chronological Case Summary showing that Fields' notice of appeal was filed on May 30, 2008, one day after the thirty-day deadline. But in his verified motion to rescind the May 30 order, Fields argued that his notice of appeal should have been deemed filed on May 28, 2008, the date he had delivered it to prison officials for mailing. The trial court agreed. On June 17, 2008, the court issued an order rescinding its earlier order, found that Fields' notice of appeal was timely filed under Indiana Appellate Rule 23, and ordered the Grant County Clerk to assemble the Clerk's record.

Fields' first appendix filed in this court includes the trial court's May 30 order, finding that his notice of appeal was untimely filed. After the State filed its appellate brief, Fields supplemented his appendix to include his motion to rescind and the trial court's order granting that motion. The State did not file a reply brief on cross-appeal and has not addressed the trial court's order granting Fields' motion to rescind. The trial court's June 17 order shows that Fields' appeal was timely filed under Appellate Rule 23. Barring any evidence to the contrary, we conclude that the evidence supports Fields' contention that his appeal was timely filed.

Appeal

Fields contends that the trial court "erred when it failed to properly credit [his] sentence with the nine hundred and seventy-six days he actually served on home

detention as a condition of probation.” Appellant’s Brief at 12. Indiana Code Section 35-38-2.6-5 limits the trial court’s options when a person violates the terms of placement on home detention. In such cases, the court may, after a hearing, change the term of placement, continue the placement, or “revoke the placement and commit the person to the department of correction for the remainder of the person’s sentence.” Ind. Code § 35-38-2.6-5(3) (emphasis added).

Here, the record belies Fields’ contention that the court ordered him to serve the entire sentence and not just the unexecuted portion of his home detention. In the abstract of judgment, the trial court revoked Fields’ home detention and ordered him to “serve the remaining fourteen months as straight time.” Appellant’s Add’l Supp. App. at 1 (emphasis added). And in the court’s order denying the motion to correct erroneous sentence, the court clarified the sentence imposed in CF-90:

2. On January 27, 2006, the Defendant violated the terms of his home detention by being arrested for Dealing in Cocaine, a Class A felony. On June 22, 2007, the Court found that the Defendant violated the terms of his home detention and violated probation. Accordingly, the Defendant was ordered to serve, in jail, the remaining fourteen months of the executed portion of his sentence (four years), and an additional two years in jail for having violated the terms of his probation.
3. By only ordering the Defendant to serve fourteen months of the original four[-]year executed sentence, he was effectively given credit time toward his sentence for the nine hundred and seventy-six days he served on home detention.
4. The Defendant’s claim that he was not given credit for time served on home detention is wholly without merit.

Appellant's App. at 4-5 (emphases added). Fields' contention that the trial court did not give him credit for the days served on home detention is without merit.³

Fields also maintains that the trial court abused its discretion because the sentencing order prevents him from receiving good time credit to the period of home detention that the court has ordered Fields to serve in the Department of Correction. In support, Fields observes that he had served 976 days on home detention, but on the abstract of judgment the trial court did not make an entry under "No. of days confined prior to sentencing." Appellant's Add'l Supp. App. at 1. As noted above, as a result of Fields' violation of home detention, the court ordered him to serve the remaining fourteen months of his four-year executed sentence. Thus, the court gave Fields credit for the 976 days served on home detention. Including them in the abstract of judgment as days confined prior to sentencing would have had the effect of giving Fields credit for 976 days served twice. Moreover, the portion of the abstract of judgment Fields refers to addresses credit to be given for time already served, not "good time" credit to be earned prospectively. Fields' arguments in this regard are without merit.

Fields also points to the notation on the abstract of judgment indicating that his sentence "is to be served straight time." Id. The State does not address this portion of Fields' argument.⁴ Although the contention is not clear, Fields appears to argue that the reference to straight time means that the trial court ordered him to serve the entire 1421

³ We observe that fourteen months, the amount of time the court ordered Fields to serve as a result of his violation of home detention, is approximately 420 days. That is less than the number of days Fields contends were remaining on his home detention sentence.

⁴ In its brief, the State refers to a statute that governs credit time for offenders on home detention. But the citation given by the State does not match the statutory language quoted in the State's brief. And the State's argument is not directed at earned credit time.

days from his original sentence. We have already concluded that that argument is without merit. But Fields also argues that the reference to straight time in the sentencing abstract instructs the Department of Correction that he is not to earn “good time” credit. We cannot agree.

Indiana Code Section 35-50-6-3 instructs how persons incarcerated for crimes may earn credit, sometimes referred to as “good time credit,” in order to hasten the person’s release date. The amount of credit earned is governed by the class assigned to the person incarcerated:

- (a) A person assigned to Class I earns one (1) day of credit time for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.
- (b) A person assigned to Class II earns one (1) day of credit time for every two (2) days the person is imprisoned for a crime or confined awaiting trial or sentencing.
- (c) A person assigned to Class III earns no credit time.
- (d) A person assigned to Class IV earns one (1) day of credit time for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing

Ind. Code § 35-50-6-3. “A person who is not a credit restricted felon and who is imprisoned for a crime . . . is initially assigned to Class I.”⁵ Ind. Code § 35-50-6-4.

Although Fields’ argument is confusing, he appears to contend that the reference to “straight time” in the abstract of judgment constitutes an instruction to the Department of Correction from the trial court that Fields may not earn “good time” credit under Indiana Code Chapter 35-50-6. But Fields did not clearly raise this issue in his motion to

⁵ There is no argument or evidence in the record to show that Fields is a credit restricted person as defined under Indiana Code Section 35-41-1-5.5.

correct erroneous sentence. In that motion, Fields contends in part that because the trial court

for some reason informed the Indiana Department of Corrections [sic] this sentence [upon revocation of home detention and probation in CF-90] was to be served without benefit of credit time, the Indiana Department of Corrections [sic] will make [Fields] redo the 1421 days all over again making him due [sic] what is actually 3 times the sentence imposed by statute.

Appellant's App. at 9. Fields' argument in the motion does not reference "straight time" and appears to be concerned only with the lack of credit for the time he had served on home detention. Thus, he has waived his claim that the court deprived him of the opportunity to earn credit time when it directed Fields to serve "straight time."

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.