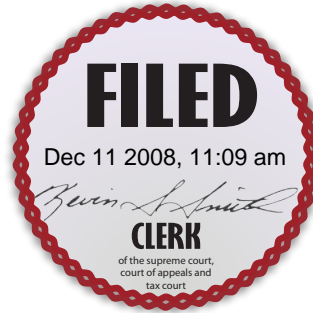


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT D. BOOKER, JR.,)

Appellant-Defendant,)

vs.)

No. 02A03-0808-CR-403

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Thomas J. Felts, Judge
Cause No. 02C01-0710-FD-400

December 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Robert D. Booker, Jr. appeals from the trial court's denial of his motion to correct erroneous sentence. Booker raises a single issue for our review, namely, whether the trial court abused its discretion in denying his motion for credit for time served in a pretrial drug deterrence program.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 12, 2007, the State charged Booker with four alcohol-related charges. On October 18, the State released Booker on his own recognizance, but, as a condition of his release, the State ordered Booker to participate in the Alcohol Abuse and Deterrent Program ("AADP"). And in participating in the AADP, Booker agreed to the following:

1. I agree to attend and take antabuse or other chemical tests (breath or urine) as directed by AADP and pay for these services when rendered. Written documentation is required within 24 hours of any missed attendance. I agree to abide by the attendance policy that is included in the Orientation packet.
2. I agree to complete physical examinations and blood tests as required by AADP staff and pay for said services when rendered.
3. I agree not to sue or possess alcohol substances and/illegal [sic] drugs while a participant in AADP. Any prescribed medication must be submitted to AADP staff by the next working day after the prescription has been filled.
4. I agree to successfully complete addiction and/or other counseling programs as referred by the AADP staff and pay for those services as rendered.

5. I agree to attend all meetings required of me by AADP regarding my participation in the program and pay for said services as rendered.
6. I agree to obtain, carry with me and use the AADP identification card for all purposes as directed and pay for a duplicate card if lost or misplaced.
7. All female participants agree to notify AADP within 24 hours upon knowledge of their pregnancy and submit to breath tests during pregnancy.
8. I agree to notify AADP at 458-2211 within 24 hours of any change in my address, telephone number, employment, legal status or emergency.
9. I agree to maintain full-time employment (40 hours per week) while in AADP. If unemployed, full-time employment must be obtained within ten (10) working days.
10. I agree not to enter any facility where intoxicating beverages are sold as a primary commodity nor purchase or consume any intoxicating beverage.
11. I understand that if my case involves court pre-trial credit, it is my responsibility to petition the court for that credit.

Appellant's App. at 31 (internal marks not indicated). Booker participated in the AADP for forty-six days.

On February 4, 2008, Booker pleaded guilty to operating while intoxicated, as a Class D felony; resisting law enforcement, as a Class D felony; and to being an habitual substance offender. The court ordered Booker to serve an aggregate four-year sentence, with six months executed and eighteen months suspended to probation. The court awarded Booker thirteen days credit for pretrial confinement.

On April 28, 2008, Booker filed a pro se motion for credit time for the forty-six days he participated in the AADP. The court generally denied that motion, and on May 30, Booker filed a motion to reconsider. The court again generally denied Booker's motion. On July 9, Booker filed a motion to correct erroneous sentence, again arguing for the forty-six day credit. On July 11, the court denied Booker's motion, stating: "The Court reviews Defendant's Motion for Correction of Erroneous Sentence . . . , finds that this is a second repetitive motion, refers Defendant to this Court's [prior two] Orders . . . , and denies Defendant's Motion for Correction of Erroneous Sentence." Id. at 50 (emphasis removed). This appeal ensued.

DISCUSSION AND DECISION

Booker argues that the trial court erred in denying his motion to correct erroneous sentence. A trial court's ruling on a motion to correct an erroneous sentence is subject to appeal through normal appellate procedures. Strowmatt v. State, 779 N.E.2d 971, 975 (Ind. Ct. App. 2002). While a motion to correct an erroneous sentence is available as an alternate remedy to either post-conviction relief or a direct appeal, it is appropriate only when the sentence is erroneous on its face. Robinson v. State, 805 N.E.2d 783, 786-87 (Ind. 2004). When a claim of a sentencing error requires consideration of matters outside the face of the sentencing judgment, including "matters in . . . the record," it is best addressed promptly on direct appeal and thereafter, where applicable, via post-conviction relief proceedings. Id. at 788. "Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the

sentencing judgment, and the ‘facially erroneous’ prerequisite should . . . be strictly applied.” Id. at 787. “Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.” Id.

Here, Booker argues that his sentence is erroneous because the trial court only awarded him thirteen days credit time and did not incorporate the additional forty-six days Booker participated in the AADP. Booker’s challenge of the court’s award of credit days requires an examination of the record regarding the days available for credit. Such a review is extraneous to the trial court’s sentencing statements, however, and Booker’s use of a motion to correct erroneous sentence therefore was an improper procedural vehicle to raise that issue. Booker should have directly appealed his sentence or filed a petition for post-conviction relief.

In any event, the trial court did not err when it denied Booker’s motion to correct erroneous sentence. As our Supreme Court has made clear:

a trial court is within its discretion to deny a defendant credit toward sentence for pre-trial time served on home detention. Absent legislative direction, we believe that a defendant is only entitled to credit toward sentence for pre-trial time served in a prison, jail or other facility which imposes substantially similar restrictions upon personal liberty.

State v. Purcell, 721 N.E.2d 220, 224 n.6 (Ind. 1999). Despite Booker’s arguments on appeal, nothing about his participation in the AADP is analogous to “time served in a prison, jail, or other facility which imposes substantially similar restrictions upon personal liberty.” Id. As this court more recently stated:

we find no authority supporting the proposition that a probationer is entitled to credit for time served when he is placed on daily reporting probation. . . . In essence, a defendant who is required to report to his probation officer on a daily basis enjoys the typical benefits and comforts of home living, including the freedom to set his own schedule for eating, sleeping, and recreation, to determine what and when to eat, and to decide the various leisure activities in which he might want to engage. Moreover, a defendant in Reed's position does not suffer the same surveillance and lack of privacy associated with becoming a member of an incarcerated population. Generally, he may come and go as he pleases, he may work, and he can attend various events outside his home so long as he complies with the conditions of his probation.

Reed v. State, 844 N.E.2d 223, 225 (Ind. Ct. App. 2006). Hence, the trial court did not err in denying Booker's motion.

Affirmed.

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