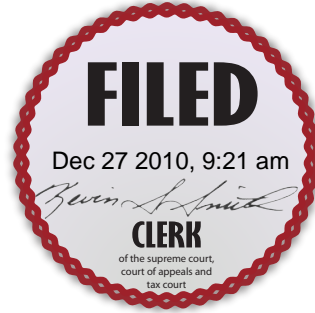


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES F. GRIFFITH,
Appellant-Petitioner,
vs.
STATE OF INDIANA,
Appellee-Respondent.

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No. 35A02-1006-PC-705

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Jeffrey R. Heffelfinger, Judge
Cause No. 35D01-1003-PC-00002

December 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Pro-se Petitioner-Appellant James F. Griffith (“Griffith”) appeals the denial of his petition for post-conviction relief, which alleged that he was due credit time against his concurrent sentences for Receiving Stolen Property.¹ We affirm.

Facts and Procedural History

On March 20, 2007, in the Huntington Superior Court, Griffith pled guilty to two counts of Receiving Stolen Property, as Class D felonies, for which he received concurrent sentences of one and one-half years. The concurrent sentences were to be served consecutive to Griffith’s sentence in Cause Number 35C01-0608-FC00037. The chronological case summary contained the notation: “The defendant has zero actual jail credit days due to this cause running consecutive to Circuit Court case.” (App. 3.)

On June 1, 2007, Griffith filed a pro-se “Motion for Jail Time Credit,” which the trial court treated as an untimely motion to correct error and summarily denied. (App. 5.) On June 25, 2007, Griffith filed a pro-se “Motion to Correct Erroneous Sentence,” which was also summarily denied. (App. 70.) In 2009, Griffith filed a second pro-se Motion to Correct Erroneous Sentence, which the trial court declined to rule upon, because it considered the motion a “repetitive motion.” (App. 71.) Griffith subsequently filed a pro-se “Motion to Run Sentences Concurrent,” which was denied. (App. 71.) Thereafter, Griffith filed a variety of pro-se motions seeking alternative placement and requesting that the trial court “evaluate time served prior to sentencing order.” (App. 71.) Denying Griffith’s motions, the

¹ Ind. Code § 35-43-4-2.

trial court directed Griffith: “Issue must be raised by a Post Conviction Relief proceeding.” (App. 71.)

On March 9, 2010, Griffith filed a pro-se petition for post-conviction relief. Upon Griffith’s request, the post-conviction court ordered the parties to submit evidence via affidavits. Griffith filed an affidavit with exhibits.² On June 2, 2010, the post-conviction court denied Griffith relief, observing that Griffith was entitled to credit against his sentence in the Huntington Circuit Court case as opposed to the Huntington Superior Court case. This appeal ensued.³

Discussion and Decision

Sentencing errors are “best presented to the trial court by the optional motion to correct error under Indiana Trial Rule 59, or upon a direct appeal from the final judgment of the trial court pursuant to Indiana Appellate Rule 9(A).” Robinson v. State, 805 N.E.2d 783, 786 (Ind. 2004). Thereafter, for claims not waived for failure to raise them by direct appeal, a defendant may seek relief pursuant to Indiana Post-Conviction Rule 1, § 1(a)(3), by claiming that the sentence exceeds the maximum authorized by law, or is otherwise erroneous. Id. A statutory motion to correct sentence is appropriate only when the sentence is erroneous on its face. Id. “When claims of sentencing errors require consideration of matters outside the face of the sentencing judgment, they are best addressed promptly on

² There is no indication of record that the State submitted an affidavit.

³ On July 15, 2010, after Griffith had filed his notice of appeal, and the post-conviction court no longer had jurisdiction, the post-conviction court purportedly dismissed Griffith’s petition due to failure to submit affidavits.

direct appeal and thereafter via post-conviction relief proceedings where applicable.” Id. at 787.

A post-conviction proceeding is not a “super-appeal.” Timberlake v. State, 753 N.E.2d 591, 597 (Ind. 2001). An issue known and available but not raised on direct appeal may not be raised in post-conviction proceedings. Collins v. State, 817 N.E.2d 230, 232 (Ind. 2004). Griffith contends that he was deprived of credit time for his confinement awaiting trial and sentencing in the instant matter. Specifically, he claims that he is due credit for 39 days in Gibson County, Tennessee awaiting extradition and 221 days in Huntington County, Indiana awaiting trial and sentencing. At sentencing in the instant case, the trial court awarded Griffith no credit time. Accordingly, the issue of discrepancy in an award of presentence credit was known to Griffith. However, Griffith did not timely pursue a direct appeal. He was not entitled to raise it in post-conviction proceedings.

Notwithstanding the procedural default, the affidavit and exhibits submitted by Griffith do not demonstrate that he was deprived of credit time due him. A person awaiting trial or sentencing earns one day of credit time for each day he is imprisoned. Ind. Code § 35-50-6-3. “[W]here a defendant is confined during the same time period for multiple offenses for which he is convicted and sentenced to consecutive terms, credit time is applied against the aggregate sentence, not against each individual sentence.” Bennett v. State, 802 N.E.2d 919, 922 (Ind. 2004) (quoting Lanham v. State, 540 N.E.2d 612, 613 (Ind. Ct. App. 1989), trans. denied).

The post-conviction court concluded:

Petitioner was arrested in Tennessee for cases out of both the Huntington Superior Court and the Huntington Circuit Court on August 2nd, 2006. The warrants for the cases were served on August 11, 2006. The fact that the petitioner shall recover credit for the time he sat in Tennessee awaiting his return to Indiana is not in dispute. However, at his sentencing for his felony case in the Huntington Superior Court, the Court ordered that the sentence run consecutive to the sentence in the Huntington Circuit Court. The Petitioner is therefore entitled to the credit against his sentence in the Huntington Circuit Court only.

(App. 73.) The Waiver of Extradition submitted by Griffith as an exhibit attached to his post-conviction affidavit indicates that he was facing Indiana charges including five counts of Burglary and two counts of Receiving Stolen Property. The sentencing record indicates that his concurrent sentences for Receiving Stolen Property were imposed consecutive to his sentence in another court.⁴ To award Griffith credit on the Receiving Stolen Property sentences (while the disposition of Cause No. 35C01-0608-FC00037 presumably involved an award of credit time) would be to award him double or extra credit, a result the Legislature did not intend. See Corn v. State, 659 N.E.2d 554, 558 (Ind. 1995). Griffith has not demonstrated that he is entitled to presentence credit on the sentences imposed for Receiving Stolen Property.

Affirmed.

NAJAM, J., and DARDEN, J., concur.

⁴ It would appear that this involves the disposition of the Burglary charges, although the sparse record before us does not definitively establish such.