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ATTORNEY FOR APPELLANT:

LORRAINE L. RODTS
Special Assistant to the Public Defender
Bloomington, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

SCOTT L. BARNHART
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

FRED MESSER,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 44A03-0609-CR-405

APPEAL FROM THE LAGRANGE CIRCUIT COURT
The Honorable J. Scott Vanderbeck, Judge
Cause No. 44C01-0412-FA-4

December 19, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Fred Messer appeals the sentence imposed following his plea of guilty to manufacturing methamphetamine as a class A felony.¹

We affirm in part, reverse in part and remand.

ISSUES

1. Whether the trial court improperly imposed a condition of probation.
2. Whether the trial court properly calculated Messer's credit time.

FACTS

On December 6, 2004, deputies with the LaGrange County Sheriff's Department went to an apartment in Wolcottville to investigate a report that methamphetamine was being manufactured. The deputies discovered an active methamphetamine lab and several precursors. The deputies arrested Messer, who had attempted to flee through the apartment's second floor window.

On December 9, 2004, the State charged Messer with manufacturing methamphetamine as a class A felony, possession of methamphetamine as a class B felony and maintaining a common nuisance as a class D felony. On August 1, 2005, the trial court held a guilty plea hearing, during which Messer stated that he wanted to plead guilty to manufacturing methamphetamine as a class A felony pursuant to an oral plea agreement. The trial court took Messer's plea of guilty under advisement and ordered that the parties' plea agreement be reduced to writing.

¹ Ind. Code § 35-48-4-1.

The State and Messer entered into a written plea agreement on August 19, 2005. Pursuant to the plea agreement, Messer agreed to plead guilty to manufacturing methamphetamine as a class A felony, in exchange for which the State agreed to dismiss the remaining charges. In addition to an executed sentence of twenty years, the plea agreement recommended five years of probation, with “the normal and usual terms of probation[.]” (App. 41). The plea agreement also set forth additional terms, including an administrative fee, an initial user’s fee and a continuing user’s fee. (App. 41).

The trial court held a sentencing hearing on September 20, 2005. The trial court accepted the plea agreement, including the State’s sentencing recommendation, and further ordered as a term of probation that Messer “attend some form of ongoing counseling and/or AA meetings.” (Sentencing Hr’g Tr. 13). The trial court then entered its guilty plea and sentencing hearing order.

DECISION

1. Terms of Probation

Messer asserts that the trial court improperly imposed a term of probation not specified in the plea agreement, namely that he attend counseling or Alcoholics Anonymous meetings. We disagree.

Generally, trial courts have broad discretion in establishing terms of probation. *S.S. v. State*, 827 N.E.2d 1168, 1170 (Ind. Ct. App. 2005), *trans. denied*. “However, when the trial court establishes terms of probation following the acceptance of a plea agreement, a trial court’s discretion is limited.” *Id.* at 1171. While “[t]rial courts are free to impose administrative or ministerial conditions as terms of probation, even if such

terms are not included in the plea agreement,” conditions of probation, which are of a punitive nature must be specified in the plea agreement. *Id.* Examples of such conditions are home detention and community service. *See id.* (citing *Freije v. State*, 709 N.E.2d 323 (Ind. 1999)).

Some conditions, however, “impose less substantial obligations that are rehabilitative in nature.” *Freije*, 709 N.E.2d at 325. Such conditions include completing counseling or educational programs. *Id.* Because these conditions “do not materially add to the punitive obligation,” the trial court may impose them even though they are not recited in the plea agreement. *Id.*

Here, the trial court imposed counseling or attendance at Alcoholics Anonymous meetings as a condition of probation. Because such condition is rehabilitative, it was within the trial court’s discretion to impose it. Thus, we find no abuse of discretion.

2. Credit Time

Messer asserts that the trial court improperly calculated his credit time. Messer maintains that he is entitled to “a pre-sentence incarceration credit of at least 288 days plus an additional 288 days credit time.” Messer’s Br. 8.

Pursuant to Indiana Code section 35-50-6-4(a), “[a] person imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I,” and pursuant to Indiana Code section 35-50-6-3(a), “[a] person assigned to Class I earns one (1) day of *credit time* for each day he is imprisoned for a crime or confined awaiting trial or sentencing.” (Emphasis added). “[P]re-sentence jail time credit is a matter of statutory right and not a matter of judicial discretion.” *Reed v. State*, 844 N.E.2d 223, 225 (Ind. Ct.

App. 2006). Upon sentencing, the trial court “shall, without delay, certify, under the seal of the court, copies of the judgment of conviction and sentence to the receiving authority.” Ind. Code § 35-38-3-2(a). The certification of judgment must include “the amount of credit, including credit time earned, for time spent in confinement before sentencing[.]” I.C. § 35-38-3-2(b)(4).

During the sentencing hearing, the trial court made the following statement: “So we’ll give you credit what you’ve served which I’m informed is to 287 days. We’ll show that’s good time.” (Tr. 13). The sentencing order, however, did not set forth either the total amount of time Messer actually served in jail or Messer’s credit time earned from his incarceration.

The State concedes that Messer was incarcerated for 288 days prior to sentencing. The State further concedes that the trial court failed to include Messer’s credit time in its sentencing order or in a separate judgment of conviction and that “remanding this case to the trial court would be appropriate to include the statutorily required information in that order.” State’s Br. 7. We agree. We therefore remand this cause to the trial court to credit Messer with 288 days of confinement prior to sentencing and Messer’s credit time earned from his incarceration² and to certify, under seal of the court, copies of the judgment of conviction and sentence to the receiving authority, which shall include “the amount of credit, including credit time earned, for time spent in confinement before sentencing[.]” I.C. § 35-38-3-2(b)(4).

² Messer’s credit time is based on his good behavior during incarceration. *See Senn v. State*, 766 N.E.2d 1190, 1195 n.3 (Ind. Ct. App. 2002), *reh’g denied*.

Affirmed in part, reversed in part and remanded.

BAKER, J., and ROBB, J., concur.