

**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.**

ATTORNEY FOR APPELLANT:

**ANN M. SUTTON**  
Marion County Public Defender Agency  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**JESSICA A. MEEK**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

KEITH NEFF,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0608-CR-647
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Michael Jensen, Magistrate  
Cause No. 49G20-0202-FA-54636

---

**November 8, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Keith Neff (“Neff”) appeals the denial of his Motion to Correct Erroneous Sentence. We affirm.

### **Issue**

On appeal, Neff raises the issue of whether the trial court erred in denying his Motion to Correct Erroneous Sentence.

### **Facts and Procedural History**

On July 7, 2004, Neff pled guilty pursuant to a plea agreement to dealing in methamphetamine, as a Class A felony. The agreed length of his sentence was twenty years. This sentence was to run concurrently with two other sentences Neff had received for convictions in Monroe County.

Prior to sentencing, Neff had served 856 days in jail and was to receive an additional 856 days of credit time pursuant to Indiana Code Section 35-50-6-3, making his total credit 1,712 days. The trial court acknowledged this in its sentencing statement: “Also pursuant to the agreement the, ---- we have credit for 856 actual days served. Plus you will get 856 days of good time. For pretrial incarceration to be awarded by the Department of Corrections.” Trial Transcript at 15. The abstract of judgment sent to the Department of Correction listed 856 days served but there was not a section on the form as to the number of days for credit time. The Department of Correction informed Neff that his release date would be March 5, 2012, which was later than Neff expected based on his credit time.

On July 14, 2006, Neff, *pro se*, filed a Motion to Correct Erroneous Sentence,

claiming that he had not received the correct days of good time credit. He based his claim on the abstract of judgment stating only the days he had been confined prior to sentencing and not including his additional credit time. The trial court denied the motion. Neff now appeals.

### **Discussion and Decision**

A defendant may challenge his sentence via a motion to correct an erroneous sentence, pursuant to Indiana Code Section 35-38-1-15. See Robinson v. State, 805 N.E.2d 783, 786 (Ind. 2004). This remedy is appropriate only when the sentence is “erroneous on its face.” Id. at 786-787.

Indiana Code Section 35-38-3-2(b)(4) requires that the trial court’s judgment of conviction separately include both the amount of time spent by the defendant in confinement prior to imposition of sentence and also the amount of credit time earned in accordance with the defendant’s credit time class. Crow v. State, 805 N.E.2d 780, 782 (Ind. 2004). Here, the trial court’s judgment of conviction, its sentencing statement, did include both the actual time served and the amount of credit time. Neff’s motion to correct an erroneous sentence alleges fault with the abstract of judgment rather than the actual judgment of conviction. A motion to correct an erroneous sentence may not be used to seek corrections of claimed errors or omissions in an abstract of judgment. Robinson, 805 N.E.2d at 794. The trial court properly dismissed Neff’s motion to correct an erroneous sentence.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.