

## MEMORANDUM DECISION

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

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Vibert Dillon Coomer,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

March 1, 2022

Court of Appeals Case No.  
21A-CR-1987

Appeal from the Bartholomew  
Superior Court

The Honorable James D. Worton,  
Judge

Trial Court Cause Nos.  
03D01-1808-CM-4647  
03D01-1809-F6-5128  
03D01-2002-F6-1097

**Robb, Judge.**

## Case Summary and Issue

- [1] Vibert Coomer pleaded guilty in causes 03D01-1808-CM-04647 (“CM-4647”) and 03D01-1809-F6-5128 (“F6-5128”) in a joint proceeding. The trial court sentenced Coomer to one and two years respectively; however, both sentences were suspended to probation.
- [2] Subsequently, the State charged Coomer with battery by bodily waste, a Level 6 felony, and resisting law enforcement, a Class A misdemeanor, under cause number 03D01-2002-F6-1097 (“F6-1097”). Coomer pleaded guilty to battery by bodily waste under F6-1097 and the trial court sentenced him to two years to be served in the Indiana Department of Correction. The F6-1097 charge violated the terms of Coomer’s probation in his earlier cases, and the trial court revoked his probation. After calculating Coomer’s credit time, the trial court determined that his one-year sentence in CM-4647 had been completed. The trial court then issued a written sentencing order addressing all three cases that ordered Coomer to serve the balance of his suspended F6-5128 sentence minus the remainder of his credit time.
- [3] Coomer now appeals, raising one issue for our review which we restate as whether the trial court abused its discretion in sentencing Coomer. Concluding the trial court did not abuse its discretion, we affirm.

## Facts and Procedural History

- [4] On August 22, 2018, the State charged Coomer, under cause CM-4647, with battery resulting in bodily injury, a Class A misdemeanor, and criminal mischief, a Class B misdemeanor. On September 14, 2018, the State charged Coomer, under cause F6-5128, with residential entry, a Level 6 felony, and two counts of battery resulting in bodily injury and invasion of privacy, all Class A misdemeanors.
- [5] On January 14, 2019, Coomer pleaded guilty to battery resulting in bodily injury under CM-4647 and residential entry, both counts of battery resulting in bodily injury, and invasion of privacy under F6-5128. The trial court sentenced Coomer to consecutive terms of one year in CM-4647 and two years in F6-5128, all of which was suspended to probation. The terms of Coomer’s probation stipulated that he “[s]hall obey all laws of the State of Indiana[.]” Appendix of Appellant, Volume 2 at 135.
- [6] On February 25, 2020, the State charged Coomer under F6-1097 with battery by bodily waste, a Level 6 felony, and resisting law enforcement, a Class A misdemeanor. The next day the State filed a petition to revoke Coomer’s probation in CM-4647 and F6-5128 due to the new criminal charge.<sup>1</sup> Coomer pleaded guilty to battery by bodily waste under F6-1097 and admitted to violating his probation. At the sentencing and disposition hearing on all three cases, the trial court accepted Coomer’s guilty plea and found that Coomer

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<sup>1</sup> At this time, there was already a petition to revoke probation pending for Coomer’s failure to comply with other conditions of his probation.

violated the terms and conditions of probation under both CM-4647 and F6-5128. An officer with the Probation Department testified that Coomer had a total of 338 days of credit time, 115 of which had been credited toward his sentence in F6-5128 at the time of his initial sentencing in that case. The trial court sentenced Coomer to two years for F6-1097, consecutive to the sanction for his probation violation, and allocated his credit time as follows:

I am going to accept the Probation Department's recommendation to execute the balance of his sentence. [S]o he will receive credit for one hundred and eighty-two and a half of this three hundred and thirty-eight days in [CM-4647], so that case is resolved. Remaining credit [] will be applied to the new Level 6 case so he will execute his balance[.]

Transcript of Evidence, Volume II at 37.

- [7] The trial court issued a written order sentencing Coomer to two years under F6-1097 to be served consecutively to the balance of his two-year sentence under F6-5128. Coomer received “credit for zero days” toward his F6-1097 sentence and “156 actual days credit toward” his F6-5128 sentence. Appealed Order at 1-2.<sup>2</sup> The Abstract of Judgment for F6-1097 also indicated that Coomer had no “accrued time” or “good time credit” under that cause. App. of Appellant, Vol. 2 at 194. Coomer now appeals. Additional facts will be provided as necessary.

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<sup>2</sup> The trial court's written order also states Coomer's sentence under CM-4647 was determined to be “served in full” after giving him 182 actual days credit toward that sentence. Appealed Order at 2.

# Discussion and Decision

## I. Standard of Review

[8] Generally, sentencing determinations are within the trial court's discretion. *Cotto v. State*, 829 N.E.2d 520, 523 (Ind. 2005). We review the trial court's sentencing decision for an abuse of that discretion. *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007). An abuse of discretion has occurred when the sentencing decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006) (citation omitted).

## II. Allocation of Credit Time

[9] Coomer argues that the trial court abused its discretion because the "record is ambiguous as to what the court[']s intended sentence is[.]" Brief of Appellant at 11. When determining a trial court's intent at sentencing, a reviewing court examines the oral statement "alongside the written sentencing statement to assess the conclusions of the trial court." *Dowell v. State*, 873 N.E.2d 59, 60 (Ind. 2007) (citation omitted). Where the two statements conflict, the reviewing court has the option of crediting the statement that accurately pronounces the sentence or remanding for resentencing. *McElroy*, 865 N.E.2d at 589.

[10] Coomer contends that the trial court's application of the remaining credit time to F6-5128 in its written order conflicts with the oral record and that "there is not sufficient information to reconcile one with another and develop a cogent

understanding of the sentence.”<sup>3</sup> Br. of Appellant at 15. Specifically, Coomer argues that the oral record suggests that the credit time will be applied to F6-1097.

[11] However, when discussing F6-1097 at the sentencing hearing, the trial court stated:

[W]ith regard to the Battery by Bodily Waste I am going to sentence the defendant to two years in the Bartholomew County Jail. Order him to pay court costs in the amount of One hundred and eighty-five dollars.

Tr., Vol. II at 37. The trial court makes no mention of credit time. Further, both the trial court’s written order and the Abstract of Judgment for F6-1097 indicate that no credit time will be applied to the F6-1097 sentence.

[12] The trial court’s statement at the sentencing hearing continued:

Consecutive to [the sentence in F6-1097] will be the Revocation of his Probation, which I am going to accept the Probation Department’s recommendation to execute the balance of his sentence. [S]o he will receive credit for one hundred and eighty-two and a half of this three hundred and thirty-eight days [of

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<sup>3</sup> We must determine to which sentence the trial court meant to apply the credit time because when a person has been incarcerated in connection with multiple matters and the trial court imposes consecutive sentences, the “credit time cannot be [applied] against each of the underlying sentences.” *Purdue v. State*, 51 N.E.3d 432, 437 (Ind. Ct. App. 2016). Rather, the trial court must apply the credit time only once. See *State v. Lotaki*, 4 N.E.3d 656, 657 (Ind. 2014). To do otherwise would result in multiplying the offender’s credit time, “effectively enabl[ing] him to serve part of the consecutive sentences concurrently.” *Id.*

credit] in [CM-4647], so that case is resolved. Remaining credit [] will be applied to the new Level 6 case[.]

*Id.*

[13] Because the trial court was discussing the revocation of Coomer’s probation under causes CM-4647 and F6-5128 when it stated the “[r]emaining credit [] will be applied to the new Level 6 case[.]” we conclude that the “new level 6 case” refers to cause F6-5128 rather than F6-1097. *Id.* Thus, the oral record is consistent with the written sentencing order and the trial court’s intent to allocate credit time to F6-5128 is clear.

## Conclusion

[14] We conclude that the trial court did not abuse its discretion in sentencing Coomer. Accordingly, we affirm.

[15] Affirmed.

Riley, J., and Molter, J., concur.