

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

Felipe Pita-Salinas,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 16, 2022

Court of Appeals Case No.
22A-CR-1493

Appeal from the
Bartholomew Superior Court

The Honorable
James D. Worton, Judge

Trial Court Cause No.
03D01-1512-FA-6283

Pyle, Judge.

Statement of the Case

[1] Felipe Pita-Salinas (“Pita-Salinas”) pleaded guilty to Class B felony dealing in cocaine¹ and was sentenced to ten (10) years and 452 days, with credit for time served of 226 days with the balance to be executed. Once he arrived at the Indiana Department of Correction (“DOC”) and was advised of his estimated release date and the amount of time to be served, Pita-Salinas believed that an error had occurred and filed a petition for jail time credit with the trial court, which was denied. Pita-Salinas appeals, pro se, arguing that the trial court erred when it denied his petition for jail credit time. Because we find no error by the trial court, we affirm.

[2] We affirm.

Issue

Whether the trial court erred in denying Pita-Salinas’ petition for jail time credit.

Facts

[3] On December 13, 2021, Pita-Salinas pleaded guilty pursuant to a plea agreement, to dealing in cocaine as a Class B felony. On January 19, 2022, the trial court conducted a sentencing hearing. After considering the evidence that was presented, the trial court imposed the following sentence: “So I am going to

¹ IND. CODE § 35-48-4-1(a)(1).

sentence the defendant to the Indiana Department of Corrections for a period of ten years, four hundred and fifty two days. Give him credit for the two hundred twenty-six days for time served.” (Tr. at 19).

[4] When Pita-Salinas arrived at the DOC, he met with DOC staff for an initial classification hearing and was informed of his estimated release date. Believing the information given to him to be in error, Pita-Salinas filed a petition for jail credit time on May 11, 2022. In his petition for jail time credit, Pita-Salinas claimed there was a mistake in the trial court’s sentencing order that had resulted in him not receiving proper credit time. (App. at 6–7). He specifically alleged that he “was sentenced to a term of 10 years executed time at the [DOC], with 452 days of jail time credit.” (App. Vol. 2 at 6). Pita-Salinas also asserted that the abstract of judgment was “incorrect . . . because it indicate[d] a [452] days [sic] increase on top of the ten [10] years [sic] sentence imposed.” (App. Vol. 2 at 6). Pita-Salinas requested that the trial court grant his petition and enter an order amending his jail time credit.

[5] The written sentencing order issued by the trial court specifically stated:

For Count 2, Dealing in Cocaine, a Class B Felony, the Court now orders the defendant committed to the [DOC] for a period of Ten (10) years and Four Hundred Fifty-Two (452) days, with credit for time served of Two Hundred Twenty-Six (226) days (6/7/2021-1/18/2022), with the balance to be executed.

(App. Vol. 2 at 10). Pita-Salinas’ sentence was reflected in a CCS entry as “10 Yr[s.] 452 Days” with jail credit of “226 Days.” (Appellee’s App. Vol. 2 at 6).

His abstract of judgment reflected that Pita-Salinas' sentence was "10 years and 452 Days" with 226 days of accrued time and 226 days of good time credit. (Appellee's App. Vol. 2 at 8).

[6] On May 25, 2022, the trial court denied Pita-Salinas' petition for jail time credit without a hearing. Pita-Salinas now appeals.

Decision

[7] Initially, we note that Pita-Salinas proceeds pro se. A litigant is not given special consideration by virtue of his pro se status. *Kelley v. State*, 166 N.E.3d 936, 937 (Ind. Ct. App. 2021). "It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Basic v. Amouri*, 58 N.E.3d 980, 983–84 (Ind. Ct. App. 2016) (internal citations omitted), *reh'g denied*.

[8] Pita-Salinas argues that the trial court erred when it denied his petition for jail time credit. Credit time is a matter of statutory right, and trial courts do not have discretion in awarding or denying such credit. *Moon v. State*, 110 N.E.3d 1156, 1160 (Ind. Ct. App. 2018). "[A]ll manner of claims of sentencing errors (other than those that do not require consideration of matters outside the face of the sentencing judgment), are addressed via post-conviction relief proceedings." *Young v. State*, 888 N.E.2d 1255, 1256 (Ind. 2008). In filing his petition, Pita-Salinas was seeking to have the trial court amend its sentencing statement to reflect his belief that his sentence was only ten (10) years executed with 452

days of credit time and not ten (10) years and 452 days executed as DOC had interpreted it. Although he titled his petition as one for jail time credit, within the body of the petition, he claimed that his petition was “a motion to correct a sentencing error clear from the face of judgment.” (App. Vol. 2 at 7). But, in the petition, he also contends that the abstract of judgment was incorrect in that it indicated “a [452] days increase on top of the ten [10] years sentence imposed.” (App. Vol. 2 at 6). Therefore, because we must consider matters outside the face of the sentencing order to determine Pita-Salinas’ contention, we treat his petition as a petition for post-conviction relief.

[9] The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004) (citations omitted). When appealing the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. *Id.* To prevail on appeal from the denial of post-conviction relief, a petitioner must show that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Weatherford v. State*, 619 N.E.2d 915, 917 (Ind. 1993).

[10] Pita-Salinas has not shown that the trial court failed to award any jail credit time. Instead, the sentencing order and abstract of judgment show that he was given 226 days of accrued jail credit time for time served from June 7, 2021, until January 18, 2022, and 226 days of good time credit. (App. Vol. 2 at 10; Appellee’s App. Vol. 2 at 8). Pita-Salinas does not challenge that actual

calculation of this credit time. Rather, he claims that the jail credit time was erroneously added to his sentence instead of subtracted from it.

[11] Pita-Salinas has not pointed to anything that supports his claim that the trial court accidentally failed to subtract the jail credit time from his ten (10)-year sentence or that the trial court actually meant for his sentence to be only ten (10) years executed with 452 days of credit time. Rather, the transcript, sentencing order, the CCS, and the abstract of judgment all reflect that his sentence was ordered to be ten (10) years and 452 days. (App. Vol. 2 at 10; Appellee's App. Vol. 2 at 6, 8). The ordered sentence falls within the sentencing range allowed under statute for a Class B felony, which is between six (6) and twenty (20) years, with an advisory sentence of ten (10) years. IND. CODE § 35-50-2-5(a). Pita-Salinas has not shown anything that supports his claim that the trial court intended a ten (10)-year sentence and somehow erred in its calculation of credit time. We acknowledge that the phraseology used to impose the sentence was different from that normally used by Indiana trial courts (eleven years and eighty-seven days), but that alone does not make the sentence erroneous. Because the 452-day portion of the sentence is double the amount of credit time awarded, it is likely the trial intended to impose the advisory sentence plus an amount of incarceration that accounted for Pita-Salinas's credit time. As written, the trial court clearly sentenced Pita-Salinas to ten (10) years and 452 days executed with 226 days to be credited for time spent incarcerated prior to his conviction. This is within the permitted statutory

range. As a result, the trial court did not err in denying Pita-Salinas' petition for jail time credit.

[12] Affirmed.

Bradford, C.J., and Brown, J., concur.