

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

Benjamin Ray Gardner,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 2, 2021

Court of Appeals Case No.
21A-CR-373

Appeal from the Marion Superior
Court

The Honorable Barbara Crawford,
Judge

Trial Court Cause No.
49G01-1901-MR-1769

Friedlander, Senior Judge.

- [1] After facing charges of felony murder, Level 2 felony battery resulting in serious bodily injury, and Level 5 felony burglary,¹ Benjamin Ray Gardner pleaded guilty to burglary in exchange for dismissal of the remaining charges. He now appeals from the trial court's denial of his belated motion to correct error in which he raised a challenge to the application of his credit time. We affirm.
- [2] Gardner pleaded guilty to one count of Level 5 felony burglary on November 8, 2019 and was sentenced to a term of six years executed in the Department of Correction. The court noted at the hearing and in its written sentencing order that Gardner had earned "302 days credit plus 101 good time days credit for a total of 403 days credit." Appellant's App. Vol. II, pp. 11-12, 14; Tr. Vol. II, p. 20. The days were accounted for as 302 actual days confined and 101 credit days earned. Appellant's App. Vol. II, p. 14.
- [3] Beginning in September of 2020 while in the DOC, Gardner questioned the application of the "101 good time days credit" to his sentence. On September 10, 2020, Gardner filed a motion for jail time credit, which the court denied on September 15, 2020. In lieu of appealing that denial, Gardner filed a supplemental pleading with the court in which he made reference to his motion for jail time credit. The court denied the requested relief on January 2, 2021.
- [4] Next, on February 11, 2021, Gardner filed a belated motion to correct error pursuant to Indiana Post-Conviction Rule 2(2), which was denied the next day.

¹ Ind. Code § 35-43-2-1 (2014).

On March 1, 2021, Gardner filed a notice of appeal, claiming that he was appealing from the court's January and February orders denying him relief. We allowed Gardner to proceed with only his challenge to the February order denying his motion to correct error.

[5] Gardner has supplied us with documentation from his March 2021 classification appeal from the DOC, in which he made similar arguments. Gardner's DOC offender identification form reflected that his earliest possible release date was July 11, 2023. *See* Appellant's App. Vol. II, pp. 59-60.

[6] The basis for denial of the relief he requested was explained as follows:

Our records match your AOJ. The Court issued you 302 days of JTC which you were given. The 101 days of Good Time Credit comes from the 302 days of JTC which is applied at the end of your sentence. If you feel your time is still wrong, please contact the Sentencing Computation Office at IDOC Central Office or contact your Judge.

Id. at 55.

[7] In each of Gardner's requests for review of the application of that time, he has contended that he should receive a total of 403 days of credit applied against his sentence. In his appeal, he claims that the trial court abused its discretion by denying his motion to correct error and failing to direct the DOC to award him a total of 403 credit days. For reasons more fully explained below, we disagree with Gardner and affirm the trial court.

[8] We first note that Gardner’s argument appears to be based on the mistaken premise that the actual time he spent in confinement awaiting sentencing—302 days—is treated the same as the 101 days he earned for good behavior as Class B credit days during the 302 days of his pre-sentencing confinement.

[9] As set out in *Alvarez v. State*, 147 N.E.3d 374, 377 (Ind. Ct. App. 2020), *trans. denied*,

Pursuant to the Indiana Penal Code, prisoners receive credit time that is applied to reduce their term of imprisonment. *Purdue v. State*, 51 N.E.3d 432, 436 (Ind. Ct. App. 2016). “The time spent in confinement before sentencing applies toward a prisoner’s fixed term of imprisonment.” *Id.* (citation omitted). “Accrued time” is the amount of time that a person is imprisoned or confined. Ind. Code § 35-50-6-0.5. “Credit time” is the sum of a person’s accrued time, good time credit, and educational credit. *Id.*

* * *

“Because pre-sentence jail time credit is a matter of statutory right, trial courts generally do not have discretion in awarding or denying such credit.” *Perry v. State*, 13 N.E.3d 909, 911 (Ind. Ct. App. 2014) (citation omitted).

The trial court had no discretion in awarding Gardner his 302 days spent in pre-sentence confinement and awarded him as much. The DOC’s earliest possible release date also reflected that award of accrued time.

[10] The 101 days that are the subject of Gardner’s appeals were awarded for his good behavior while in confinement awaiting sentencing. A defendant such as Gardner who is assigned to Class B earns one day of good time credit for every three days the defendant is confined awaiting trial or sentencing. *See* Ind. Code

§ 35-50-6-3.1(c) (2016). The trial court awarded Gardner the appropriate number of days and the DOC acknowledged the trial court's award.

[11] When a defendant believes that he has been erroneously sentenced, he may file a motion to correct the sentence under Indiana Code section 35-38-1-15 (1983). “The purpose of the statute ‘is to provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence.’” *Robinson v. State*, 805 N.E.2d 783, 785 (Ind. 2004) (quoting *Gaddie v. State*, 566 N.E.2d 535, 537 (Ind. 1991)). The court’s ruling on such a motion is subject to review for an abuse of discretion, which occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it. *Davis v. State*, 978 N.E.2d 470, 472 (Ind. Ct. App. 2012).

[12] At sentencing, Gardner received “302 days credit plus 101 good time days credit for a total of 403 days credit.” Appellant’s App. Vol. II, p. 14. As the court noted in its denial of Gardner’s belated motion to correct error, “Court finds credit time awarded at time of sentence (11-8-19) was 302 actual days plus 101 class B credit days which is exactly your request.” *Id.* at 42. We conclude that the trial court did not abuse its discretion in denying Gardner’s motion because he had already been awarded the appropriate credit time by the court.

[13] Gardner’s dispute with the DOC appears to be premature and is not ripe for disposition here. Gardner’s calculations as respects his earliest projected release date agree with the DOC up to the treatment of the 101 days of good time credit. Put differently, Gardner argues that he has been denied the 101 days of

good time credit because it was not accounted for when he received credit for the actual time served awaiting sentencing in the DOC's earliest projected release date computation.

[14] Our Supreme Court made clear in *Majors v. Broglin*, 531 N.E.2d 189, 190 (Ind. 1999), “credit time is applied only toward the date of release on parole for felons and does not diminish or otherwise impact the fixed term.” Along that same vein, Indiana Code subsections 35-50-6-1(a) and (b) (2010), provide respectively that “when a person imprisoned for a felony completes the person’s fixed term of imprisonment, less the credit time the person has earned with respect to that term,” he shall be released on parole, and “a person released on parole remains on parole from the date of release until the person’s fixed term expires.” “Earned credit time does not reduce a parolee’s sentence for purposes of parole.” *Garrison v. Sevier*, 165 N.E.3d 996, 998 (Ind. Ct. App. 2021) (citing Ind. Code § 35-50-6-1(a), -(b)). A felon may have his earned credit time, which is conditional upon good behavior, revoked for a violation while in the DOC. *See State v. Mullins*, 647 N.E.2d 676 (Ind. Ct. App. 1995). *Id.*

[15] The DOC informed Gardner that his earliest possible release date was July 11, 2023. *Id.* at 59. This calculation presumed that Gardner’s behavior did not warrant a deprivation or revocation of the credit time he would earn or had earned. Gardner has failed to present us with argument or evidence supporting his claims that the DOC has as of yet deprived him of the good time credit, and thus has failed to establish that the trial court erred by failing to direct the DOC to recognize the 101 days of good time credit it awarded.

[16] We conclude that the trial court did not err by denying Gardner's belated motion to correct error inasmuch as the court's order already accomplished exactly what Gardner asked the court to do. The DOC has not denied Gardner his 101 days of good time credit because application of those days depends on Gardner's continued good behavior in prison.

[17] Judgment affirmed.

Crone, J., and Pyle, J., concur.