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**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH THOMPSON,

)

Appellant-Defendant,

)

vs.

)

No. 49A05-0808-PC-481

)

STATE OF INDIANA,

)

Appellee-Plaintiff.

)

)

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable William E. Young, Judge

Cause No. 49G20-0608-FC-137323

March 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE¹

Joseph Thompson, pro se, appeals from the trial court's denial of his motion for jail time credit. Thompson raises a single issue for our review, namely, whether the court erred when it denied his motion.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 3, 2006, the State charged Thompson with possession of cocaine, as a Class C felony, and possession of marijuana, as a Class A misdemeanor. Thompson was arrested on August 6, and, later that same day, was released to pretrial home detention. On January 24, 2007, Thompson pleaded guilty to the Class C felony, in exchange for which the State agreed to recommend a cap of four years on Thompson's executed sentence. On March 29, the court sentenced Thompson to eight years, with four years executed and the remainder suspended. The court then ordered Thompson to serve the executed portion of his sentence on home detention. Thompson began serving that sentence on October 4, 2007.

On January 15, 2008, the State filed a notice of violation of community corrections rules. Thompson was arrested thereafter,² and at the February 7 hearing on the State's notice Thompson admitted that he twice violated the rules of his home

¹ The designation of "PC" in this cause number notwithstanding, Thompson is not appealing from the denial of a petition for post-conviction relief.

² The record is unclear when Thompson was arrested, but he states in his brief that it was on January 23, 2008.

detention. The court placed Thompson on work release and awarded him 180 days of credit time as of February 7. Thompson remained in jail until April 11.³

On April 24, the State filed a notice of violation of the conditions of post-trial release, and Thompson was arrested. After a hearing on May 1, the court revoked Thompson's community corrections placement and ordered him to serve the remainder of his sentence in the Department of Correction. The court awarded Thompson 210 days of credit time. On June 13, Thompson filed a motion for credit time, in which he asserted that he had spent a total of 368 days in jail and earned an additional 76 days of credit time. The court denied Thompson's motion without a hearing on July 11. This appeal ensued.

DISCUSSION AND DECISION

On appeal, Thompson argues that he is entitled to a total of 402 days of credit time for time served either in jail, in home detention, or on work release. Thompson also asserts that 103 of those days—days allegedly spent in jail or on work release—should be credited with good time.⁴ We cannot agree.

Thompson did not present his request for credit time by way of a petition for post-conviction relief. Rather, in essence, he filed a motion to correct sentence pursuant to Indiana Code Section 35-38-1-15. Murfitt v. State, 812, N.E.2d 809, 810 (Ind. Ct. App. 2004). In Murfitt, a case similar to Thompson's, this court described the burdens appellants such as Thompson face from the trial court's denial of such a motion:

³ Again, this date is not identified in the record but in Thompson's brief.

⁴ The reason for the discrepancy between Thompson's request to the trial court and his statements on appeal is not clear. But, as discussed below, that discrepancy is irrelevant for purposes of this appeal.

Recently, in Robinson v. State, 805 N.E.2d 783, 786-88 (Ind. 2004), our supreme court clarified the circumstances under which it is proper for a defendant to raise sentencing errors in a motion to correct sentence. The court in Robinson explained as follows:

When claims of sentencing errors require consideration of matters outside the face of the sentencing judgment, they are best addressed promptly on direct appeal and thereafter via post-conviction relief proceedings where applicable. Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the sentencing judgment, and the “facially erroneous” prerequisite should henceforth be strictly applied, We therefore hold that a motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.

In addition to limiting a motion to correct sentence to errors apparent on the face of the judgment, Indiana case law has long emphasized that “the preferred procedure is by way of a petition for post-conviction relief.” This emphasis that post-conviction proceedings are “preferred” for raising sentencing error should not be understood to imply that the statutory motion to correct sentence is nevertheless permissible to raise claims that are not facially evident on the judgment. It is not. This Court “tries to encourage conservation of judicial time and energy while at the same time affording speedy and efficient justice to those convicted of a crime.” As to sentencing claims not facially apparent, the motion to correct sentence is an improper remedy. Such claims may be raised only on direct appeal and, where appropriate, by post-conviction proceedings.

Id. at 787 (footnote and citations omitted).

In Robinson, the defendant filed a motion to correct sentence and alleged that the trial court’s sentencing judgment “reported only the actual time served before sentencing and did not comply with the statutory requirement that it also include a separate statement of credit time earned for time spent in confinement before sentencing.” Id. at 788. The defendant in that case did “not allege a calculation error that would require

consideration of matters outside the face of the sentencing judgment.” Id. Instead, the defendant claimed only that required information had been omitted, and our supreme court determined that his claim was “the type of claim that may be asserted by a motion to correct sentence.” Id.

Unlike the defendant in Robinson, however, [Appellant-Defendant] Murfitt does not allege that the trial court merely omitted statutorily required information from the sentencing judgment. Rather, he contends that he is entitled to an additional 270 days of credit time, which represents the number of days he was released on bond prior to sentencing. Murfitt’s claim raises an alleged calculation error that requires consideration of matters outside the face of the sentencing judgment. Following Robinson, Murfitt’s claim may not be presented by way of a motion to correct sentence. We therefore conclude that the trial court properly denied his motion.

Id. at 810-11.

Thompson’s appeal is entirely controlled by this court’s opinion in Murfitt. Thompson did not file a petition for post-conviction relief and does not appeal from the court’s denial of such a petition. Rather, Thompson filed a motion to correct sentence on the grounds that he is entitled to an additional amount of credit time. Thompson’s claim raises an alleged calculation error that requires consideration of matters outside the face of the sentencing judgment. As such, Thompson’s claim may not be presented by way of a motion to correct sentence, and we must affirm the trial court’s denial of Thompson’s motion.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.