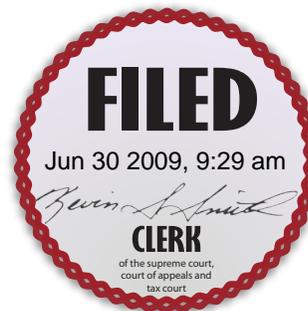


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MATT TAYLOR,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-0903-CR-120
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0408-FC-145905

June 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Matt Taylor, *pro se*, appeals the trial court's denial of his motion for jail time credit. Because Taylor has failed to include an adequate record for us to review this issue on appeal, he has waived it. Waiver notwithstanding, because the CCS reflects that Taylor agreed to receive no credit time in this case, Taylor cannot complain on appeal. We therefore affirm the trial court.

Facts and Procedural History

In November 2005, Taylor pled guilty to failure to stop after an accident resulting in death as a Class C felony and carrying a handgun without a license as a Class C felony. The trial court sentenced Taylor to eight years with four years suspended to probation on each count, to run concurrently.

On April 2, 2008, the State filed a Notice of Probation Violation.¹ At the August 20, 2008, hearing for sanctions, the trial court found that Taylor had already admitted to the allegations and then revoked Taylor's probation and reinstated his previously suspended four-year sentences, to run concurrent to one another but consecutive to Cause No. 32D04-0804-FD-70. Appellant's App. p. 27. According to the CCS, "DOC to award good time credit in accordance with Indiana law. *Credit time of 0 days as agreed upon by both parties.*" *Id.* (capitalization omitted) (emphasis added).

On January 8, 2009, Taylor filed a *pro se* motion for jail time credit pursuant to Indiana Code §§ 35-50-6-3 and -4. Specifically, he alleged that he was in custody from

¹ Taylor did not include a copy of the notice of probation violation in his appendix. Rather, we only have the CCS reflecting that the notice was filed on this date. Taylor, however, claims in his brief that the notice was based on his arrest for operating while intoxicated in Hendricks County. The CCS reflects that Taylor was arrested for the probation violation on May 21, 2008. Appellant's App. p. 24.

April 6, 2008, to August 20, 2008, and was therefore entitled to 135 days of jail time credit but was awarded zero days of credit. The trial court denied the motion because the “Hendricks County case [was] mandatorily consecutive” and “credit time was agreed to by parties.” *Id.* at 34 (court’s handwritten notes on bottom of Taylor’s motion); 28 (CCS entry reflecting same). Taylor, *pro se*, now appeals.

Discussion and Decision

Taylor, *pro se*, appeals the trial court’s denial of his motion for jail time credit, which is akin to a motion to correct sentence. *See Brattain v. State*, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002). Specifically, Taylor argues that he is entitled to 135 days of jail time credit for the days he spent in confinement awaiting sentencing for his probation violation. Indiana Code § 35-50-6-4(a) initially assigns a person imprisoned awaiting trial or sentencing to Class I, and Indiana Code § 35-50-6-3(a) provides that a person assigned to Class I earns one day of credit time for each day the person is imprisoned awaiting trial or sentencing.

In *Robinson v. State*, our Supreme Court clarified that only sentencing errors that fail to comply with statutory authority and “are clear from the face of the judgment imposing the sentence” may be raised in a motion to correct sentence. 805 N.E.2d 783, 787 (Ind. 2004). The Court recently recognized that Marion County, where Taylor was sentenced, “does not issue judgments of conviction” and held that “the trial court’s abstract of judgment will serve as an appropriate substitute for purposes of making the claim” of an incorrect calculation of credit time. *Neff v. State*, 888 N.E.2d 1249, 1251 (Ind. 2008). However, Taylor has not provided us with a copy of the abstract of

judgment in this case. *See* Appellant's App. p. 27 (CCS entry reflecting that one was issued). *Pro se* litigants are held to the same standard as trained legal counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2005), *trans. denied*. Nevertheless, because the CCS is consistent with Taylor's assertion that he received zero days of credit time, we will not deem the deficiency of the record in this regard to preclude our review. There is another deficiency that does preclude our review.

That is, the CCS reflects that Taylor received zero days of credit time "as agreed upon by both parties." Appellant's App. p. 27 (capitalization omitted). However, Taylor did not request a transcript of the probation revocation hearing, which is the hearing where the parties reached this agreement. Therefore, we have absolutely no way of reviewing the basis or validity of the parties' agreement. "It is Appellant's duty to present an adequate record clearly showing the alleged error. Where he fails to do so, the issue is deemed waived." *Thompson v. State*, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002) (quotation omitted). Because Thompson has failed to present us with sufficient information to determine the basis of the alleged error, he has waived this issue.

Waiver notwithstanding, to the extent that Taylor was statutorily entitled to credit time in this case, the record is clear that Taylor agreed to no credit time and thus cannot complain on appeal.² *See, e.g., Booher v. State*, 773 N.E.2d 814, 822 (Ind. 2002) (discussing doctrine of invited error). We therefore affirm the trial court.

² We note that it is well established that a defendant who receives consecutive sentences is entitled to pre-sentence credit only against the aggregate term of his consecutive sentences. *Emerson v. State*, 498 N.E.2d 1301, 1302 (Ind. Ct. App. 1986) (citing *Simms v. State*, 421 N.E.2d 698, 702-03 (Ind. Ct. App. 1981)); *see also Corn v. State*, 659 N.E.2d 554, 558-59 (Ind. 1995) (adopting *Emerson*). As the

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.

State argues, Taylor possibly received pre-sentence credit against his sentence in Cause No. 32D04-0804-FD-70, which the trial court ordered to be served *consecutive* to his sentences in this case. On this ground, *Dolan v. State*, 420 N.E.2d 1364 (Ind. Ct. App. 1981), cited by Taylor, is distinguishable.