

Case Statement

Haywood Rice, pro se, appeals the denial of his motion to correct erroneous sentence.

We affirm.

Issue

The sole issue for our review is whether the trial court abused its discretion in denying Rice's motion to correct erroneous sentence to reflect earned jail credit time.

Facts and Procedural History

Rice was convicted of two counts of attempted murder and was sentenced on May 6, 1998, to consecutive terms of fifty years. On May 7, 1999, this Court affirmed Rice's convictions and sentence in an unpublished memorandum decision. *Rice v. State*, No. 49A04-9806-CR-299 (Ind. Ct. App. May 7, 1999). On February 11, 2000, Rice filed a petition for post-conviction relief. Appellant's App. at i. On December 27, 2002, he withdrew his petition without prejudice and filed a motion to correct erroneous sentence. *Id.* The trial court granted Rice's motion to correct erroneous sentence and imposed a corrected sentence of fifty years. *Id.* at 39.¹ On October 2, 2003, Rice filed a petition for post-conviction relief, which the trial court denied. *Id.* at i, 39. This Court affirmed the trial court's ruling in an unpublished memorandum decision. *Rice v. State*, No. 49A02-0404-PC-313 (Ind. Ct. App. Dec. 4, 2004), *trans. denied*.

¹ The date the motion was granted is not in the record before us, and there is no abstract of judgment in the record to reflect the corrected sentence. The information we have regarding Rice's corrected sentence is provided by a Court of Appeals Order requiring Rice to show cause as to why his "Motion Requesting the Court of Appeals to Permit Appellant to Proceed on Appeal Belatedly Due to Trial Court's Mis-File Dating of Notice of Appeal" should not be dismissed. Appellant's App. at 39.

On November 21, 2006, Rice filed a motion to correct erroneous sentence to reflect earned jail credit time, requesting that the trial court “correct his sentence and issue an order crediting Rice with three-hundred-eighty (380) days of earned jail time credit (over and above the 380 days of actual time served in jail, currently reflected in his sentencing order for time he spent confined in the Marion County Jail while awaiting trial and sentencing.” Appellant’s App. at 7. Rice attached his abstract of judgment, which indicated that he was confined 380 days prior to sentencing. *Id.* at 11. He also attached a page from the chronological case summary (“CCS”) that included the following entry: “[Rice] ordered committed to Department of Correction and given 380 days credit time.” *Id.* at iii, 12. Lastly, he attached the Department of Correction’s “Offender Information System Sentence Detail” indicating that he received 380 days’ jail credit time. *Id.* at 13-14. On December 6, 2006, the trial court denied the motion. Rice appeals.

Discussion and Decision

Rice appeals the denial of his motion to correct erroneous sentence. We review a trial court’s decision on a motion to correct erroneous sentence for abuse of discretion. *Mitchell v. State*, 726 N.E.2d 1228, 1243 (Ind. 2000), *overruled on other grounds by Robinson v. State*, 805 N.E.2d 783, 787 (Ind. 2004). An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it. *Myers v. State*, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999).

Motions to correct erroneous sentence are governed by Indiana Code Section 35-38-1-15, which provides,

If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

“[A] motion to correct sentence is available only to correct sentencing errors clear from the face of the judgment[.]” *Robinson*, 805 N.E.2d at 794.

Rice argues that his sentence is erroneous because he is entitled to receive credit toward his sentence for the 380 days of his pre-sentence imprisonment *plus* one additional day of credit time for each day of pre-sentence imprisonment for a total of 760 days. *See* Indiana Code Section 35-38-3-2 (requiring that judgment of conviction include “the amount of credit, including credit time earned, for time spent in confinement before sentencing”).²

The State concedes that “[Rice], who initially had to be assigned to credit Class I,^[3] was entitled to 760 days of presentencing credit.” Appellee’s Br. at 5. However, it asserts that the trial court did not err in denying Rice’s motion to correct erroneous sentence because

² In addition to credit time earned, Indiana Code Section 35-38-3-2 also requires that the judgment of conviction include:

- (1) the crime for which the convicted person is adjudged guilty and the classification of the criminal offense;
- (2) the period, if any, for which the person is rendered incapable of holding any office of trust or profit;
- (3) the amount of the fines or costs assessed, if any, whether or not the convicted person is indigent, and the method by which the fines or costs are to be satisfied;
- ...
- (5) the amount to be credited toward payment of the fines or costs for time spent in confinement before sentencing.

³ Indiana Code Section 35-50-6-3 provides in relevant part that “[a] person assigned to Class I earns one (1) day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing.” “A person imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I.” Ind. Code § 35-50-6-4(a).

although Rice attached the abstract of judgment to his motion, he “failed to attach the sentencing order.” *Id.*

In *Robinson*, our supreme court held that the “sentence” that is subject to correction pursuant to Indiana Code Section 35-38-1-15 “means the trial court’s judgment of conviction imposing the sentence and not the trial court’s entries on the Department of Correction’s abstract of judgment form.” 805 N.E.2d at 794. Although Rice states that he is challenging the sentencing order and not the abstract of judgment, he did not attach the trial court’s judgment of conviction to his motion to correct erroneous sentence. Accordingly, the trial court did not abuse its discretion in denying his motion. *See Pettiford v. State*, 808 N.E.2d 134, 136 (Ind. Ct. App. 2004) (holding that the trial court did not err in denying the defendant’s motion to correction erroneous sentence where he challenged the abstract of judgment); *see also Jackson v. State*, 806 N.E.2d 773, 774 (Ind. 2004); *Laycock v. State*, 805 N.E.2d 796, 798 (Ind. 2004); *Crow v. State*, 805 N.E.2d 780, 782 (Ind. 2004); *Robinson*, 805 N.E.2d at 793-95; *Portee v. State*, 806 N.E.2d 358, 360 (Ind. Ct. App. 2004); *cf. McElroy v. State*, 865 N.E.2d 584, 588-899 (Ind. 2007) (noting that while the sentencing order controls when there is a discrepancy between a sentencing order and an abstract of judgment, court would review abstract of judgment in determining whether trial court abused its discretion in

sentencing defendant where all information required by Indiana Code Section 35-38-3-2 was contained therein).⁴

We further observe that “[s]entencing judgments that report only days spent in pre-sentence confinement and fail to expressly designate credit time earned shall be understood by courts and by the Department of Correction automatically to award the number of credit time days equal to the number of pre-sentence confinement days. . . . Because the omission of designation of the statutory credit time entitlement is thus corrected by this presumption, such omission may not be raised as an erroneous sentence.” *Robinson*, 805 N.E.2d at 791-92. Applying this presumption here, if the actual sentencing judgment reports that Rice spent 380 days of confinement before sentencing, Rice is entitled to 380 days’ credit for time spent in pre-trial confinement plus 380 days of good credit time. *See Washington v. State*, 805 N.E.2d 795, 796 (Ind. 2004) (explaining that presumption establishes that defendant is entitled to 140 days credit for time spent in pre-trial confinement plus 140 days credit time); *see also Pettiford*, 808 N.E.2d at 136

Affirmed.

BAILEY, J., and NAJAM, J., concur.

⁴ The State notes that, “in the event this Court should find that the sentencing portion of the chronological case summary . . . is equivalent to the sentencing judgment, this Court should remand the case to the trial court so that the trial court can correct the credit time to which [Rice] is entitled.” Appellee’s Br. at 6. The *Robinson* court concluded that Indiana Code Section 35-38-3-2 did not apply to the abstract of judgment because the abstract of judgment did not include all the information required by the statute and “[t]he contents of the abstract of judgment form do not control the information that the sentencing judge must include in the judgment of conviction.” 805 N.E.2d at 793-94. Here, the CCS page neither contains all the information required by Indiana Code Section 35-38-3-2 nor is there any indication that the CCS page was used to convey the final judgment to the receiving authority and therefore cannot be considered equivalent to the judgment of conviction. *See Jackson*, 806 N.E.2d at 773-74 (affirming trial court’s denial of defendant’s motion to correct sentence even though the CCS indicated that defendant received 1132 credit days).