

**MOTION TO CORRECT ERRONEOUS SENTENCE**

The Defendant, by counsel, respectfully requests this Court to correct the Defendant's sentence.

In support of the Motion, the Defendant states the following:

1. On [insert date], the Court sentenced the Defendant to [insert sentence] for the offense(s) of [insert offenses)].
2. Pursuant to I.C. 35-38-1-15, an erroneous sentence shall be corrected by the trial court after written notice is given to the convicted person.
3. The Court's Sentencing Order is erroneous on its face in light of the statutory authority for the following reasons: [insert alleged errors)].

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to correct the Defendant's erroneous sentence, and for all other relief just and proper in the premises.

(Signature)

## NOTES

## CASEBANK E.13.b

1. I.C. 35-38-1-15 requires that a Motion to Correct Erroneous Sentence be accompanied by a memorandum.
2. A motion to correct erroneous sentence can only be used to correct a judgment of the court that is erroneous on its face. Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004) ("[c]laims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.") For instance, a judgment which sentences a defendant under an old version of a statute is erroneous on its face. Reffett v. State, 571 N.E.2d 1227 (Ind. 1991). However, a motion to correct erroneous sentence cannot be used to challenge the calculation of credit time that requires an evidentiary hearing. Washington v. State, 805 N.E.2d 795 (Ind. 2004) (if the Defendant wishes to contest accuracy of sentencing judgment's declaration regarding number of days in pretrial confinement, such a claim would be outside face of sentencing judgment and he could not use motion to correct erroneous sentence to present such a claim).

In order to correct a denial of credit time that requires an evidentiary hearing, a motion to correct errors under Indiana Rule of Criminal Procedure 16 can be filed within thirty days of the judgment, or after thirty days, a petition for post-conviction relief is the "preferred procedure." Robinson, 805 N.E.2d at 787. Moreover, the issue can be raised on direct appeal. Id.

There may be few credit time issues that do not require an evidentiary hearing and are invalid on the face of the judgment. Robinson, 805 N.E.2d at 794 (judgments reporting pre-sentence confinement time but omitting credit time will be presumed to designate credit time days equal to days of pre-sentence confinement); but see Groves v. State, 823 N.E.2d 1229 (Ind.Ct.App. 2005) (a judgment that denies good time credit for time served is invalid on its face and can be challenged through a motion to correct erroneous sentence).

3. A motion to correct erroneous sentence is also not available to correct errors in an abstract of the judgment. Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004). If there is a clerical error concerning credit time or time served on the judgment or abstract, a motion for a nunc pro tunc entry, pursuant to Trial Rule 60, can be made.

## CASE LAW

Neff v. State, 888 N.E.2d 1249 (Ind. 2008) (when an offender is sentenced and receives credit for time served, earned credit time or both, that time is applied to the new sentence immediately, before application of prospective earned credit time, in order to determine the Defendant's earliest release date. Thus, a prisoner who files a motion to correct erroneous sentence for any reason must first demonstrate that he has exhausted the remedies available through the DOC offender grievance program).

Newsom v. State, 851 N.E.2d 1287 (Ind.Ct.App. 2006) (juvenile court did not abuse its discretion by denying Defendant's motion to correct erroneous sentence challenging juvenile court's dispositional order. Over 4 years after Defendant completed his juvenile wardship with DOC, he filed a motion to correct erroneous sentence under I.C. 35-38-1-15 to challenge the dispositional order. I.C. 35-38-1-15 provides a remedy for a convicted person who is sentenced erroneously. Because Defendant is not a "convicted person" and the juvenile court's disposition does not constitute a "sentence," Court concluded that I.C. 35-38-1-15 is not available to Defendant as a means to challenge his juvenile disposition.

NOTE: Trial Rule 60 may be the appropriate method for challenging an erroneous disposition).

Williams v. State, 494 N.E.2d 1001 (Ind.Ct.App. 1986) (when the sentence imposed by the trial court is found to be improper, trial court has the power to vacate the illegal sentence and impose a proper one which results in an increased sentence; imposition of corrected sentence does not run afoul of prohibition against double jeopardy).

Beliles v. State, 663 N.E.2d 1168 (Ind.Ct.App. 1996) (where original sentencing order contained clerical error which reflected more lenient sentence than that which should have been imposed under plea agreement, trial court appropriately corrected errors in judgment by *nun pro tunc* entries. Trial court's failure to send notice or copies of corrected sentencing order to Department of Corrections or to Defendant did not violate due process because it did not result in tangible detriment or concrete injury to Defendant's substantive rights).

Hardley v. State, 905 N.E.2d 399 (Ind. 2009) (State may challenge an erroneous sentence even though it is not facially invalid and may do so on appeal even without having filed a motion to correct erroneous sentence at the trial level).

Godby v. State, 976 N.E.2d 1235 (Ind.Ct.App. 2012) (motion to correct erroneous sentence not proper channel to challenge court costs. Procedures to correct an erroneous sentence under Ind. Code 35-38-1-15 should be limited to those fundamental sentencing errors where sentences have been entered in violation of express statutory authority or an erroneous interpretation of a statutory penalty provision).