



Jeffrey Zenthofer was convicted of murder and robbery and sentenced to sixty years for the murder conviction. His convictions and sentence were affirmed on appeal by our Supreme Court. *See Zenthofer v. State*, 613 N.E.2d 31 (Ind. 1993). Zenthofer later filed a motion to correct erroneous sentence. Zenthofer, pro se, appeals the denial of that motion.

We affirm.

On February 28, 1991, retail clerk Janet Bebout was found shot to death behind the counter of a Village Pantry store. Zenthofer was arrested for that offense on December 13, 1991. Following a jury trial, he was convicted of murder and robbery and sentenced to sixty years and fifty years, respectively, for those two offenses. The robbery sentence was later vacated. On April 13, 2009, Zenthofer filed a pro se Motion to Correct Erroneous Sentence and Issue a New Judgment of Conviction and Order of Commitment. Zenthofer contends the original sentencing order was faulty in that it did not include both credit time earned and time spent in pre-sentence confinement. He petitioned the court to correct those purported deficiencies and issue a new sentencing order.

Zenthofer appeals the denial of his motion to correct erroneous sentence under Ind. Code Ann. § 35-38-1-15 (West, PREMISE through 2009 Public Laws approved and effective through 4/20/2009). We have set out the standard of review for such rulings as follows:

A motion to correct sentence is appropriate only when the sentencing error is clear from the face of the judgment imposing the sentence in light of the statutory authority. “A sentence is facially defective if it violates express statutory authority at the time the sentence is pronounced, as when the sentence falls outside the statutory parameters for the particular offense or is based on an erroneous interpretation of a penalty provision.” *Pettiford v. State*, 808 N.E.2d 134, 136 (Ind. Ct. App. 2004) (citations omitted).

A trial court’s ruling upon a motion to correct sentence is subject to

appeal by normal appellate procedures. When we review the trial court's decision on such a motion, we defer to the trial court's factual findings and review its decision only for abuse of discretion, and we review its legal conclusions de novo.

*Newsom v. State*, 851 N.E.2d 1287, 1288-89 (Ind. Ct. App. 2006) (some internal citations omitted).

Zenthofer acknowledges that the trial court awarded 133 days of pre-sentencing confinement, but contends the failure to record on the abstract of judgment the credit time earned requires the issuance of a new sentencing order. The State acknowledges that I.C. § 35-38-3-2 (West, PREMISE through 2009 Public Laws approved and effective through 4/20/2009) requires the abstract of judgment or the judgment of conviction to report “not only the number of days confined while imprisoned before sentence but also must separately designate the credit time earned for the said period of confinement[.]” *Robinson v. State*, 805 N.E.2d 783, 794 (Ind. 2004). Our Supreme Court further held in *Robinson*, “that 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[.]” *Id.* In this case, however, there is no judgment of conviction, but instead only an abstract of judgment.

In *Neff v. State*, 888 N.E.2d 1249, 1252 (Ind. 2008), our Supreme Court indicated that, in certain cases, “an abstract of judgment may function in the place of a judgment of conviction” for purposes of applying the *Robinson* presumption. Is this such a case? The Supreme Court explicitly identified convictions emanating from Marion County as apt for applying this principle on the basis that trial courts in Marion County do not regularly issue formal judgments of conviction, but instead issue abstracts of judgment. We do not know

whether Posey County trial courts similarly do not issue judgments of conviction or, perhaps more to the point, whether that was the case in 1992, when this abstract of judgment was issued. It seems to us, however, that the Supreme Court did not intend this “list” to be exhaustive, meaning that the *Neff* principle is not applied exclusively in those counties that do not issue judgments of conviction, such as Marion County. This is especially so where, as here, there is no disagreement as to the amount of credit time to which Zenthofer is entitled.

Both the State and Zenthofer agree that he was entitled to credit for 133 days of pre-sentencing incarceration, which is reflected in the entry “including 12/18/91” on the line on the abstract of judgment recording the number of days Zenthofer was confined prior to sentencing. Both also agree that, by application of the *Robinson* presumption, Zenthofer is entitled to 133 days of credit time. Thus, by application of *Neff* and *Robinson*, the 1992 abstract of judgment indicates that Zenthofer is entitled to credit for 266 days of pre-sentencing confinement (133 days of actual time served, 133 days of credit time). In this case, there is no need to issue a corrected abstract of judgment or a judgment of conviction because the original abstract of judgment, as construed in light of *Robinson*, correctly reflects that Zenthofer is entitled to 266 days of pre-sentencing credit time. The trial court did not err in denying Zenthofer’s Motion to Correct Erroneous Sentence and Issue a New Judgment of Conviction and Order of Commitment.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.