

NO.: _____

IN THE

SUPREME COURT OF THE UNITED STATES

Mark A. Thacker - Petitioner;

v.

State of Indiana - Respondent(s);

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES SUPREME COURT

APPENDIX OF PETITIONER

Attorney for Petitioner:

Mark A. Thacker ##974152
Plaintiff-Thacker, *pro se*
Pendleton Correctional Facility
4490 W. Reformatory Road
Pendleton, IN 46064-9001

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Appendix A

Marion County Superior Court, Indianapolis, Indiana Order denying Relief

Case No. 49-10000-1

Marion County Superior Court.

Marion County Superior Court.

Marion County Superior Court.

Marion County Superior Court.

D E N I E D

November 13, 2018

Mark Thacker
See Robinson v. State 805 N.E. 2d 783 (Ind. 2004). Sentencing judgments that report only days spent in pre-sentence confinement and fail to expressly designate credit time earned shall be understood by the courts and the DOC to automatically award the number of credit time days equal to the number of pre-sentence confinement days. You have not demonstrated the DOC has deprived you of earned credit days.

**IN THE SUPERIOR COURT 3 OF MARION COUNTY
STATE OF INDIANA**

STATE OF INDIANA,

Respondant,

vs.

Mark A. Thacker

Petitioner.

FILED

(105)

NOV 13 2018

Myle A. Eldridge
CLERK OF THE MARION CIRCUIT COURT

Cause No. 496039603CF034643

Judge Sheila Carlisle

MOTION TO CORRECT ERRONEOUS SENTENCE

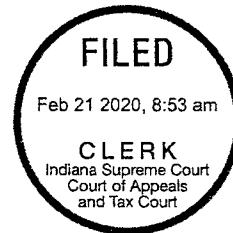
COMES NOW Petitioner, Mark A. Thacker, pro se, and moves this Court to correct the erroneous sentence imposed on him in this cause pursuant to Indiana Code 35-38-1-15. In support, Petitioner states the following

1. On the 17 day of June, 1997, the Court sentenced Petitioner for the following offense(s).
(f) Murder, Conspiracy to commit Burglary, a Class B felony; and Burglary, a Class B felony.
2. Petitioner received an executed term of one-hundred and seventy-five (175) years and the Court ordered Petitioner committed to the Department of Correction.
3. Petitioner claims his sentence is erroneous for the following reasons:
 - a. Petitioner was given 469 days of credit for Jail time served and not Good time credit according to Indiana Code 35-50-6-3(b) which states that A person assigned to Class I earns (1) day of good time credit for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.
 - b. Petitioner's Abstract of Judgment will also show that petitioner was only given credit for jail time served and not good time credit as allowed under Indiana Code 35-50-6-3(b).

Appendix B
Indiana Court of Appeals Decision denying Relief

MEMORANDUM DECISION

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.



APPELLANT PRO SE

Mark A. Thacker
Pendleton, Indiana

ATTORNEYS FOR APPELLEE

Curtis T. Hill, Jr.
Attorney General

Samuel J. Dayton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Mark A. Thacker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 21, 2020
Court of Appeals Case No.
19A-CR-2057

Appeal from the
Marion Superior Court

The Honorable
Sheila Carlisle, Judge

The Honorable
Stanley Kroh, Magistrate

Trial Court Cause No.
49G03-9603-CF-34643

Vaidik, Judge.

- [1] In 1997, Mark Thacker was convicted of murder and other offenses and sentenced to 175 years. *See Thacker v. State*, 709 N.E.2d 3 (Ind. 1999), *reh'g denied*. Thereafter, Thacker sought post-conviction relief. In 2002, the post-conviction court granted Thacker relief, reducing his sentence to 85 years. *See* Appellant's App. Vol. II p. 13. The revised abstract of judgment provides that, as of June 17, 1997, Thacker had been confined 469 days "prior to sentencing." *Id.* at 19. The revised abstract does not provide the amount of credit time that Thacker earned for the time he spent in confinement before sentencing.
- [2] In November 2018, Thacker, pro se, filed a motion to correct erroneous sentence, arguing that his revised abstract of judgment shows that he "was only given credit for jail time served and not good time credit as allowed under Indiana Code 35-50-6-3(b)." *Id.* at 20. That same day, the trial court denied Thacker's motion as follows:

See Robinson v. State, 805 N.E.2d 783 (Ind. 2004). Sentencing judgments that report only days spent in pre-sentence confinement and fail to expressly designate credit time earned shall be understood by the courts and the DOC to automatically award the number of credit time days equal to the number of pre-sentence confinement days. You have not demonstrated the DOC has deprived you of earned credit days.

Id. It appears that Thacker first learned that his motion had been denied in April 2019. *See* 49G03-9603-CF-34643 (Apr. 25, 2019). In August 2019, Thacker filed a petition for permission to file a belated notice of appeal pursuant to Indiana Post-Conviction Rule 2(1), which the trial court denied.

[3] Thacker now appeals, making several arguments why the trial court should have given him permission to file a belated notice of appeal so that he could challenge the denial of his motion to correct erroneous sentence. We first note that Post-Conviction Rule 2(1) cannot be used to salvage a defendant's late appeal of a denial of a motion to correct erroneous sentence. *See In re Adoption of O.R.*, 16 N.E.3d 965, 970 n.2 (Ind. 2014) (citing *Davis v. State*, 771 N.E.2d 647 (Ind. 2002)). But even if Thacker were allowed to bring a belated appeal, he would not be entitled to the substantive relief he seeks. As our Supreme Court explained in *Robinson*:

In an effort to facilitate the fair and expeditious resolution of appellate litigation arising from these judgments, we adopt the following appellate presumption. Sentencing 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.**

805 N.E.2d at 792 (emphasis added). Accordingly, we affirm the trial court's denial of Thacker's petition for permission to file a belated notice of appeal.

[4] Affirmed.

Najam, J., and Tavitas, J., concur.

Appendix C
Indiana Supreme Court Denying Relief

In the
Indiana Supreme Court

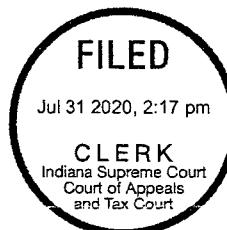
Mark Anthony Thacker,
Appellant,

v.

State of Indiana,
Appellee.

Court of Appeals Case No.
19A-PC-2057

Trial Court Case No.
49G03-9603-CF-34643



Order

The Court of Appeals issued a memorandum decision on February 21, 2020, making a petition to transfer due no later than April 6, 2020, if rehearing was not sought. Ind. Appellate Rules 25, 57(C)(1). On May 18, 2020, with no petition for rehearing or transfer having been filed, the Clerk of Courts certified the memorandum decision.

Then, postmarked May 22, Appellant tendered a petition to transfer, which the Clerk rejected as untimely and as defective for lacking a table of authorities. Appellant now requests that the Clerk be ordered to file his petition to transfer, correctly noting that Indiana Appellate Rule 57(G), governing the content and arrangement of petitions to transfer, does not state that a table of authorities is required. However, nothing in the motion addresses the reasons for the extreme untimeliness of Appellant's petition. Accordingly, even though the petition to transfer was not defective in form, he has failed to show good cause for allowing it to be filed belatedly.

Being duly advised, the Court DENIES Appellant's "Motion to Order Clerk to File Petition to Transfer." This appeal is at an end.

Done at Indianapolis, Indiana, on 7/31/2020.

Loretta H. Rush
Loretta H. Rush
Chief Justice of Indiana