

George Burnett (“Burnett”) appeals from the trial court’s order denying his motion to correct erroneous sentence. Burnett presents the following restated issues for our review:

- I. Whether the trial court erred in sentencing Burnett where his sentence exceeded the advisory sentence for the felony one class higher than the most serious offense for which he was convicted; and
- II. Whether the trial court erred by crediting Burnett’s pre-sentence incarceration against the sentence for only one of the offenses for which he was convicted.

We affirm.

FACTS AND PROCEDURAL HISTORY

Burnett was charged with attempted burglary as a Class B felony and two counts of residential entry, each as a Class D felony, and the State later added an habitual offender allegation. Burnett entered into a plea agreement with the State whereby he pleaded guilty to both counts of residential entry, and the State moved to dismiss the remaining charges against him. The plea agreement also provided for a fixed sentence of consecutive three-year terms with one year of incarceration and five years suspended to probation. The trial court accepted the plea agreement and sentenced Burnett pursuant to its terms.

More than three years after his original sentence was imposed, Burnett violated his probation and was ordered to serve three of the previously suspended years of incarceration. Burnett filed a motion to correct erroneous sentence claiming that his crimes were part of a single episode of criminal conduct for which he could not be sentenced to more than four years. The trial court denied Burnett’s motion, and Burnett now appeals.

DISCUSSION AND DECISION

Burnett appeals from the denial of his motion to correct erroneous sentence. A defendant who believes he has been erroneously sentenced may file a motion to correct the sentence pursuant to Indiana Code section 35-38-1-15, which provides as follows:

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.

Neff v. State, 888 N.E.2d 1249, 1250-51 (Ind. 2008); Ind. Code § 35-38-1-15. A motion to correct erroneous sentence may be used only to correct sentencing errors that are clear from the face of the judgment. *Robinson v. State*, 805 N.E.2d 783, 787 (Ind. 2004). Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct erroneous sentence. *Id.*

I. Illegal Sentence

Burnett first argues that his sentence is erroneous because the aggregate sentence exceeds the advisory sentence for a Class C felony. Generally, a trial court cannot order consecutive sentences in the absence of express statutory authority. *Stites v. State*, 829 N.E.2d 527, 529 (Ind. 2005). Except for crimes of violence, consecutive sentences for a single episode of criminal conduct “shall not exceed the sentence for a felony which is one class of felony higher than the most serious of the felonies for which the person has been convicted.” Ind. Code § 35-50-1-2(c). The advisory sentence for a Class C felony offense is

four years. I.C. § 35-50-2-6. Burnett argues that his six-year sentence is illegal, and the trial court abused its discretion by denying his motion.

The decision to accept or reject a plea agreement is a matter left to a trial court's discretion. *Allen v. State*, 865 N.E.2d 686, 689 (Ind. Ct. App. 2007). Once a plea agreement is accepted by the trial court, the plea agreement, like a contract, is binding upon both parties. *Id.* Further, if the trial court accepts the plea agreement, it is strictly bound by the sentencing provisions of the plea agreement and is precluded from imposing any sentence other than that required by the agreement. *Id.* Further, our Supreme Court has held that “a defendant may not enter a plea agreement calling for an illegal sentence, benefit from that sentence, and then later complain that it was an illegal sentence.” *Collins v. State*, 509 N.E.2d 827, 833 (Ind. 1987). The Supreme Court has further explained as follows:

[D]efendants who plead guilty to achieve favorable outcomes give up a plethora of substantive claims and procedural rights, such as challenges to convictions that would otherwise constitute double jeopardy. Striking a favorable bargain including a consecutive sentence the court might otherwise not have the ability to impose falls within this category.

Davis v. State, 771 N.E.2d 647, 649 n.4 (Ind. 2002) (citation and quotation omitted).

Here, Burnett signed the fixed plea agreement that specifically set forth the sentence to be imposed. Although the trial court could not have imposed that sentence otherwise, it was bound by the terms of the plea agreement negotiated by Burnett and the State. Burnett received a substantial benefit from the plea in that a Class B felony offense charged against him was dismissed, as was an habitual offender count, and just one year of the six-year sentence was ordered to be served in the Department of Correction with the remainder

suspended to probation. Only now that he has violated his probation does Burnett challenge his sentence claiming that it is illegal. The trial court did not err by denying Burnett's motion.

II. Credit Time

Burnett also contends that the trial court erred by denying his motion to correct erroneous sentence because the trial court credited Burnett's pre-trial confinement against only one of the two counts to which he pleaded guilty.

Indiana Code section 35-50-6-3 provides that a person imprisoned for a crime or confined awaiting trial or sentencing earns one day of credit time for each day he is imprisoned for a crime or confined. The determination of a defendant's pre-trial credit depends upon pretrial confinement and that confinement being a result of the criminal charge for which the sentence is imposed. *Payne v. State*, 838 N.E.2d 503, 510 (Ind. Ct. App. 2005) (citing *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000)). If a person incarcerated awaiting trial on more than one charge receives consecutive terms for those charges, he is only allowed credit time against the total or aggregate of the terms. *Payne*, 838 N.E.2d at 510. Such was the case here, and we conclude that the trial court did not err by denying Burnett's motion to correct erroneous sentence. We have found no cases to indicate that a defendant is entitled to credit time for pretrial confinement for consecutive sentences imposed where the offenses were the result of a single episode of criminal conduct.

Affirmed.

RILEY, J., and BAILEY, J., concur.