



Lonnie Garner appeals the trial court's denial of his petition for writ of habeas corpus. Garner raises one issue, which we restate as whether the trial court erred by denying his petition for writ of habeas corpus. We affirm.

The relevant facts follow. On May 3, 2001, Garner was sentenced to fifteen years in the Indiana Department of Correction for his unlawful possession of a firearm by a serious violent felon as a class B felony conviction. On July 12, 2004, the trial court granted a motion to correct erroneous sentence and ordered that Garner receive credit for 171 days served in pretrial confinement plus 171 days of good time credit for a total of 342 days.

In March 2008, Garner filed a petition for writ of habeas corpus in the Sullivan County Circuit Court arguing that the Indiana Department of Correction had failed to credit him with the 342 days as ordered when the trial court granted the motion to correct erroneous sentence. The State filed a motion to dismiss or for summary disposition. The trial court entered the following order denying Garner's petition:

4. The Department of Correction records submitted as an Appendix to the Petition show that from November 13, 2000, to the Sentencing Date of May 3, 2001, Garner received and is receiving credit for 171 days actually served and for 171 days of earned credit time, which constitutes a total of 342 days against his executed sentence as awarded by the Sentencing Court.

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7. Because the facts show that Garner received "a total of three hundred forty-two (171 actual + 171 good time credit) days against his execution [sic] sentence," just as the Sentencing Court ordered, he is not entitled to any relief. Keith Neff v. State, 888 N.E.2d 1249 (Ind. 2008).

It is therefore ORDERED, ADJUDGED and DECREED by the Court that the Petitioner's VERIFIED PETITION FOR STATE WRIT OF HABEAS CORPUS, is hereby DENIED.

Appellant's Appendix at 77-78.

The issue on appeal is whether the trial court erred by denying Garner's petition for writ of habeas corpus. Ind. Code § 34-25.5-1-1 provides that "[e]very person whose liberty is restrained, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered from the restraint if the restraint is illegal." "The purpose of the writ of habeas corpus is to bring the person in custody before the court for inquiry into the cause of restraint." Partlow v. Superintendent, Miami Correctional Facility, 756 N.E.2d 978, 980 (Ind. Ct. App. 2001). "One is entitled to habeas corpus only if he is entitled to his immediate release from unlawful custody." Id. "[A] petitioner may not file a writ of habeas corpus to attack his conviction or sentence." Id. "[A] petitioner must file a petition for post-conviction relief in the court of conviction (rather than a petition for a writ of habeas corpus in the court in the county of incarceration) when he attacks the validity of his conviction or sentence and/or does not allege that he is entitled to immediate discharge." Id. (citing Ind. Post-Conviction Rule 1).

Garner appears to argue that he is entitled to immediate release because the Indiana Department of Correction failed to give him credit for the 342 days as required by the trial court's July 2004 order. According to Garner, he should have been released on May 14, 2008.

First, we note that the Indiana Supreme Court held in Neff v. State, 888 N.E.2d 1249, 1252 (Ind. 2008), that an offender arguing that the Indiana Department of Correction has failed to credit him with earned credit time must first exhaust his administrative remedies through the offender grievance process. See Neff, 888 N.E.2d at 1252 (“We agree that a prisoner who files a motion to correct an erroneous sentence for any reason must first demonstrate that he has exhausted the remedies available through the offender grievance process. It appears that Neff miscalculated his release date in good faith, and the DOC administrative process would have quickly identified his mistake for him.”). Garner has failed to demonstrate that he exhausted his administrative remedies through the offender grievance process.

Moreover, the documents attached to Garner’s petition demonstrate that the Indiana Department of Correction has given Garner credit for the 342 days at issue. Appellant’s Appendix at 25. Garner would have been released on May 14, 2008, but due to disciplinary violations, he was deprived of other credit time and was later demoted from Class I credit time. Id. at 26. As a result, Garner failed to demonstrate that the Indiana Department of Correction failed to give him credit for the 342 days or that he was entitled to immediate release.<sup>1</sup> We conclude that the trial court did not err by denying Garner’s petition for writ of habeas corpus.

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<sup>1</sup> Garner also seems to argue that, because he was resentenced in 2004, the Sheriff, rather than the Indiana Department of Correction, should have determined his credit time classification between 2001 and his resentencing in 2004. Garner waived this issue by failing to present it to the trial court. See, e.g., Howard v. State, 818 N.E.2d 469, 477 (Ind. Ct. App. 2004) (“The failure to raise an issue at trial waives the issue for appeal.”), trans. denied. Moreover, Garner cites no relevant authority that the Sheriff had control over Garner’s credit time classification while Garner was in the custody of the Indiana Department of Correction.

For the foregoing reasons, we affirm the trial court's denial of Garner's petition for writ of habeas corpus.

Affirmed.

ROBB, J. and CRONE, J. concur