



## STATEMENT OF THE CASE

Defendant-Appellant Anthony Bush appeals the denial of his petition for post-conviction relief.

We affirm.

## ISSUE

Bush presents two issues, which we restate and consolidate into one: whether the post-conviction court erred by denying Bush's motion for educational credit time.

## FACTS AND PROCEDURAL HISTORY

On February 6, 2004, Bush pleaded guilty to robbery as a Class C felony. He was sentenced to five years to be served in the community correction program. Following a hearing in April 2004, the court found that Bush had violated the conditions of the community correction program and ordered Bush committed to the Department of Correction. Bush apparently filed a motion for educational credit time on December 12, 2005, which the court denied on January 24, 2006.<sup>1</sup> It is from this denial that Bush now appeals.

## DISCUSSION AND DECISION

Bush contends that the post-conviction court improperly denied his motion for educational credit time. Upon review of a denial of post-conviction relief, this Court neither weighs the evidence nor determines the credibility of the witnesses. *Stewart v.*

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<sup>1</sup> Although Appellant's Appendix contains a file-stamped copy of Bush's Motion for Credit for Completion of Educational Program, the CCS does not reflect this filing. *See* Appellant's App. at 31-32 and 11-12. However, the CCS does show that the request was denied by the court on January 24, 2006. *See* Appellant's App. at 12.

*State*, 517 N.E.2d 1230, 1231 (Ind. 1988). To the extent the post-conviction court has denied relief, the petitioner appeals from a negative judgment and faces the rigorous burden of showing that “the evidence as a whole leads unerringly and unmistakably” to a conclusion opposite that reached by the post-conviction court. *Harris v. State*, 762 N.E.2d 163, 166 (Ind. Ct. App. 2002), *reh’g denied, trans. denied*. Thus, we will not set aside the post-conviction court’s ruling unless the evidence is without conflict and leads solely to a result different from that reached by the post-conviction court. *Stewart*, 517 N.E.2d at 1231. In making this determination, we consider only the evidence that supports the decision of the post-conviction court together with any reasonable inferences. *McCullough v. State*, 672 N.E.2d 445, 447 (Ind. Ct. App. 1996), *trans. denied*. Moreover, although we do not defer to the post-conviction court’s legal conclusions, we do accept its factual findings unless they are clearly erroneous. *Stevens v. State*, 770 N.E.2d 739, 746 (Ind. 2002), *reh’g denied, cert. denied*, 124 S.Ct. 69, 157 L.Ed.2d 56 (2003). In summary, “the defendant must convince this Court that there is *no* way within the law that the court below could have reached the decision it did.” *Id.* at 745.

In the present case, Bush alleges that he is entitled to credit time for completing an educational program called “Thinking for a Change.” Bush refers to the program as a substance abuse program. By statute, successful completion of certain programs earns inmates credit time toward their sentence. Ind. Code § 35-50-6-3.3 provides, in pertinent part:

(a) \*\*\*\*\*

(b) In addition to any credit time that a person earns under subsection (a) or section 3 of this chapter, a person may earn credit time if, while confined by the department of correction, the person:

- (1) is in credit Class I;
- (2) demonstrates a pattern consistent with rehabilitation; and
- (3) successfully completes requirements to obtain at least one (1) of the following:
  - (A) A certificate of completion of a vocational education program approved by the department of correction.
  - (B) A certificate of completion of a substance abuse program approved by the department of correction.**
  - (C) A certificate of completion of a literacy and basic life skills program approved by the department of correction.

(Emphasis added). However, Bush fails to provide any documentation in support of this contention. He neither shows that he successfully completed the program nor that the program is approved by the Department of Correction for educational credit time. In addition, his motion entitled “Motion for Credit for Completion of Educational Program” is contained in his Appendix, but Exhibit A, which the motion states is attached and is a certified copy of Bush’s degree from the program, is not contained in the Appendix or in Bush’s brief.

Moreover, in support of his argument, Bush cites to Ind. Code § 35-50-6-3.3(a)(3)(B) and claims that it clearly states that a person is entitled to two hundred and seventy (270) days of credit time if he completes a substance abuse and Thinking for a Change program. To the contrary, Ind. Code § 35-50-6-3.3(a)(3)(B) provides:

(a) In addition to any credit time a person earns under subsection (b) or section 3 of this chapter, a person earns credit time if the person:

- (1) \*\*\*\*\*
- (2) \*\*\*\*\*

(3) successfully completes requirements to obtain one (1) of the following:

(A) \*\*\*\*

(B) A high school diploma.

(C) \*\*\*\*

(D) \*\*\*\*.

Bush has wholly failed to meet his burden of proof to show that the evidence is without conflict and that it leads solely to a result different from that reached by the post-conviction court.

### CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that the post-conviction court properly denied Bush's motion.

Affirmed.

BAILEY, J., and CRONE, J., concur.