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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES HARTSELL, JR.,)

Appellant-Petitioner,)

vs.)

No. 71A03-0608-PC-386

STATE OF INDIANA,)

Appellee-Respondent.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John A. Marnocha, Judge
Cause No. 71D02-0501-FB-9

September 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Charles Hartsell, Jr., appeals the post-conviction court's denial of his petition for educational credit. Specifically, Hartsell argues that the post-conviction court erred in denying his petition because he had previously filed a petition with the Department of Correction (DOC) and had not received a response. Concluding that Hartsell did not present evidence that he pursued the requisite administrative remedies with the DOC, we affirm the judgment of the post-conviction court.

FACTS

On December 12, 2005, Hartsell pleaded guilty to class C felony burglary. On January 11, 2006, the trial court sentenced Hartsell to eight years imprisonment and ordered him to pay \$1,331.99 restitution. On direct appeal, we affirmed the trial court's imposition of an eight-year sentence but reversed the restitution order. Hartsell v. State, 71A03-0612-CR-583, slip op. at 3 (Ind. Ct. App. July 16, 2007).

Hartsell filed a petition for educational credit time with the post-conviction court on July 7, 2006. The post-conviction court denied his petition the same day, concluding that the request pertains to programs completed while at the Department of Correction, and any additional credit time would be at the discretion of the Department of Correction and should be directed to the Department of Correction pursuant to Sander v. State, 816 N.E.2d 75 (Ind. Ct. App. 2004). Therefore, the Court denies the request, without a hearing.

Appellant's App. p. 25. Hartsell now appeals.

DISCUSSION AND DECISION

Hartsell argues that he earned his high school diploma while serving his sentence and that the post-conviction court erred by denying his petition for educational credit.

Specifically, Hartsell contends that he is entitled to one year of credit time pursuant to Indiana Code 35-50-6-3.3¹ because he filed an application for educational credit with the DOC but “no response was received.” Appellant’s Br. p. 3.

The legislative intent behind the educational credit time statute is to enhance rehabilitation by providing offenders with the incentive to further their education while incarcerated. Samuels v. State, 849 N.E.2d 689, 691-92 (Ind. Ct. App. 2006), trans. denied. While the trial court determines the initial credit time when an offender is sentenced, modification of that credit time, including modification because of educational credit, is the responsibility of the DOC. Id. at 692. Put another way, the trial court imposes the sentence and the DOC administers the sentence; thus, the DOC maintains the responsibility to deny or restore credit time. Id. An application for educational credit pursuant to Indiana Code section 35-50-6-3.3 “must be made to and the initial ruling thereon made by the DOC when the educational achievement was accomplished after sentencing” Sander, 816 N.E.2d at 78 (emphasis added).

On appeal, Hartsell claims that he “pursued his application for educational achievement through the proper procedure by first submitting it to the [DOC and] . . . no response was ever received.” Appellant’s Br. p. 3. However, Hartsell’s petition to the post-conviction court does not assert that he pursued any administrative remedies with the DOC before petitioning the post-conviction court for relief. Appellant’s App. p. 8-10.

¹ Indiana Code section 35-50-6-3.3(d) provides, in relevant part, that the “amount of credit time a person may earn under this section is . . . [o]ne (1) year for graduation from high school.”

Furthermore, the evidence Hartsell submitted in no way demonstrates that he sought relief from the DOC. Instead, Hartsell submitted a copy of his high school diploma, a signed affidavit, and his acceptance and enrollment to Ball State University. *Id.* at 11-24. While Hartsell contends that this evidence was sufficient for the post-conviction court to conclude that he had actually obtained his high school diploma and, thus, award him one year of credit time, Hartsell was required to first prove that he had exhausted the requisite administrative remedies with the DOC. Because Hartsell submitted no evidence that he exhausted—or even pursued—administrative remedies with the DOC, the post-conviction court properly denied his petition for educational credit.

The judgment of the post-conviction court is affirmed.

BAILEY, J., and VAIDIK, J., concur.