

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:

ATTORNEYS FOR APPELLEE:

DONALD BROWN
New Castle, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DONALD BROWN,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

)
)
)
)
)
)
)
)
)
)
)

No. 18A04-0912-CR-711

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18C04-0710-FC-39

March 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Donald Brown, acting pro se, appeals the trial court's denial of his petition for restoration of credit time. For our review, Brown raises two issues: 1) whether the trial court erred when it denied his petition for restoration of credit time; and 2) whether the trial court had the authority to deprive him of credit time at his sentencing. Concluding Brown provided an insufficient record for our review of the issues, we affirm.

Facts and Procedural History

On May 5, 2003, the State charged Brown with burglary, a Class C felony, and alleged he was an habitual offender. Brown subsequently failed to appear in court for multiple hearings and a bench warrant was issued for his arrest. Brown was apprehended on August 9, 2005. While awaiting trial, Brown was found guilty of jail misconduct by the Delaware County Disciplinary Committee and sanctioned to twenty-three days in segregation. On January 4, 2006, Brown entered into a plea agreement with the State, whereby he agreed to plead guilty to burglary and the State would dismiss the habitual offender allegation.

After accepting Brown's guilty plea, the trial court sentenced him to eight years but stayed execution of the sentence pending Brown's completion of a forensic diversion program. In its sentencing order, the trial court stated Brown was entitled to "372 days served (no good time credit is awarded due to jail misconduct)." Brief of Appellant (Appendix) at 6. While participating in the program, Brown was found to have used illegal drugs on three separate occasions, and he failed to appear for a urine test on another occasion. Because of this, the State filed a petition to revoke probation on

September 23, 2008. On September 29, 2008, the trial court held a hearing on the petition to revoke probation, after which it ordered Brown to serve the remainder of his eight-year sentence. The trial court noted “the defendant will be given credit time for 372 days served, for which no good time credit is awarded due to jail misconduct, plus 24 days served since 2/9/06, for which the defendant shall be awarded good time credit.” Id. at 19.

Brown filed a petition for reinstatement in the drug court program on February 20, 2009, and a petition to modify sentence or alternative placement of commitment on June 18, 2009, both of which the trial court denied. Brown then filed a petition for restoration of time on September 29, 2009, which the trial court also denied. Brown now appeals.

Discussion and Decision

Initially, we note Brown is pro se on appeal. Pro se litigants are held to the same standard as trained legal counsel and are required to follow procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2005), trans. denied. It is the appellant’s duty to provide a record that reflects the error alleged. Williams v. State, 690 N.E.2d 162, 176 (Ind. 1987). To the extent the record is inadequate, it results in waiver of the issue. Id.

Indiana Code section 35-50-6-3 provides a person assigned to Class I earns one day of credit time for each day the person is confined awaiting trial or sentencing, a person assigned to Class II earns one day of credit time for each two days of confinement, and a person assigned to Class III earns no credit time. Indiana Code section 35-50-6-4 provides a non-credit-restricted felon is initially assigned to Class I. However, a person may be reassigned to Class II or Class III if the person violates “[a]

rule of the penal facility in which the person is imprisoned.” Ind. Code § 35-50-6-4(c)(2). In addition, a person who violates one or more rules of a penal facility may be deprived of any part of the credit time the person has already earned. Ind. Code § 35-50-6-5.

Brown admits he was found guilty of jail misconduct by the Delaware County Disciplinary Committee and sanctioned. Although Brown claims deprivation of his good time credit was not a part of his sanction, he provides no materials in the record to confirm or deny that claim. The record is clear the trial court found Brown was not entitled to good time credit because of jail misconduct. However, there is nothing in the record to indicate whether the trial court was reciting information received by it from the Delaware County Jail or whether the trial court simply refused to award credit time. As the appellant, Brown bears the burden of providing a record reflecting the error alleged. Here, Brown has provided no basis in the record for us to find error in the trial court’s sentencing order. See Williams, 690 N.E.2d at 176. Therefore, Brown has waived review of the issue, see id., and we hold the trial court did not err when it denied his petition for restoration of time.

Conclusion

Brown provided an insufficient record of the proceedings to enable our review of the trial court’s decision, resulting in a waiver of his claims. Therefore, the trial court did not err when it denied his petition for restoration of time.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.