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IN THE
COURT OF APPEALS OF INDIANA

STEPHEN TAYLOR,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A02-0811-PC-1017
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William Young, Judge
Cause Nos. 49G20-0511-FC-187697, 49F20-0710-FD-214950

June 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Stephen Taylor appeals the denial of his motion for additional earned credit time. We reverse and remand.

FACTS AND PROCEDURAL HISTORY

Taylor is currently serving time in the New Castle Correctional Facility. On July 7, 2008, he filed, in the Marion Superior Court, a "Motion for Additional Earned Credit Time." (Appellant's App. at 27.) The motion alleged the following facts. Taylor successfully completed a basic life skills educational program titled "40 Days of Purpose" on May 20, 2008. (*Id.*) On May 21, 2008, Taylor wrote to the superintendent of New Castle Correctional Facility and the Commissioner of the Department of Correction, requesting earned credit time for completing the program. Having received no response, on June 10, 2008, Taylor filed a written grievance addressed to the Executive Assistant. After receiving no response to his grievance, Taylor requested the necessary form to appeal to the next level of review within the DOC, but he was not given a form.

Therefore, Taylor asked the court to award him up to six months credit for completing the program. The chronological case summary indicates the trial court received a "progress report" from the DOC on August 18, 2008 and/or September 2, 2008. (Appellant's App. at 13.) On September 8, 2008, without a hearing, the trial court denied Taylor's motion.

DISCUSSION AND DECISION

The State argues Taylor's appeal should be dismissed because Taylor did not exhaust his administrative remedies, and therefore, the court lacked subject matter

jurisdiction to consider his motion. The trial court determines the initial credit time when an offender is sentenced. *Members v. State*, 851 N.E.2d 979, 982 (Ind. Ct. App. 2006). When educational credit is earned after sentencing, the credit due the offender is determined by the DOC. *Id*. at 982-83. If educational credit is denied, the offender must exhaust administrative remedies with the DOC. *Id.* at 983. When administrative remedies are exhausted, the offender may seek judicial review via a petition for post-conviction relief.[1] *Young v. State*, 888 N.E.2d 1255, 1256 (Ind. 2008). In *Young*, our Supreme Court addressed the showing an offender must make to be granted educational credit in a post-conviction proceeding:

> Here, for example, Young must show in the first place what the relevant DOC administrative grievance procedures are, and then that he has exhausted them at all levels. Young must also present evidence of his diploma and the credentials of the school that awarded it. He must show that he meets each requirement of any necessary statute (for example, I.C. § 35-50-6-3.3).

Id. at 1257.

The record includes a copy of the DOC's offender grievance process. Section XIII provides, "Prior to filing a formal written grievance, an offender shall attempt to resolve the grievance in an informal manner by discussing it with his/her counselor or another staff member in the housing unit who may be able to assist in the resolution of the problem." (Appellant's App. at 55.) If the staff member is not the appropriate person to address the problem, "the staff person shall, within 24 hours, contact staff who may be able to resolve the grievance." (*Id*. at 56.) If the staff member is the appropriate person

[1] Taylor's motion was not denominated a petition for post-conviction relief, but the State does not argue that fact precludes judicial review of his claim.

to address the problem, the staff member must attempt to resolve the problem "as soon as possible." (*Id*.) "If the grievance cannot be resolved by the staff person within ten (10) working days, the staff person shall so advise the offender and the offender shall be permitted to initiate a formal written grievance." (*Id*.)

Taylor alleges he attempted to resolve the issue informally by writing a letter to the superintendent and the commissioner on May 21, 2008. He further alleges he received no response by June 10, 2008, which was thirteen working days later.[2] According to Section XV of the grievance procedure, "[f]ailure of staff to respond in accordance with the established time limit or extension at any stage of the process shall entitle the offender to move to the next stage of the process." (*Id*. at 63-64.) Therefore, if Taylor received no response within ten working days, he was entitled to move to the next step, which was to file a formal written grievance. He did so on June 10, 2008.

Grievances are submitted to the Executive Assistant. The Executive Assistant is supposed to assign grievances a case number and log them within two working days of their submission. The Executive Assistant has fifteen days from the date of receipt to complete investigation of the grievance and provide a response to the offender. Therefore, the Executive Assistant had until July 1, 2008 to respond to Taylor's grievance. Taylor alleges he received no response, which would entitle him to proceed to the next step.

[2] Taylor alleges he waited twenty days, but that would include the intervening weekends and Memorial Day. The deadlines in the grievance procedure are stated in terms of "working days," which is defined as "Monday through Friday, excluding any holidays recognized and observed by the State of Indiana." (Appellant's App. at 45.)

If an offender is dissatisfied with the response provided by the Executive Assistant, the offender may appeal to the Department Offender Grievance Manager. "The decision of the Department Offender Grievance Manager shall be final and shall end the offender's administrative remedies for the issues in this grievance." (*Id*. at 63.) Taylor alleges he requested the form required to initiate an appeal, but none was provided to him. Section XV of the grievance procedure provides, "The Executive Assistant or designated staff shall ensure that the offender has access to any forms necessary to proceed with the grievance process and shall ensure that the offender receives any necessary form(s) within one (1) working day from the date of request." (*Id*. at 64.) Alleging that he once again did not receive a timely response, Taylor filed a motion for credit time with the trial court on July 7, 2008.

Taken at face value, Taylor's allegations establish he complied with the DOC's grievance procedure and exhausted his remedies. The State characterizes his motion as a series of "unsupported assertions," (Appellee's Br. at 6), but cites no authority that Taylor is required to conclusively prove his case in his motion.[3] Rather, it appears Taylor has not been given the opportunity to prove his allegations. The chronological case summary indicates the trial court received a "progress report" from the DOC on August 18, 2008 and/or September 2, 2008. These reports were not included in the record. On May 6, 2009, we ordered the Marion County Clerk to send the Clerk of this Court the entire clerk's record in this case. The Marion County Clerk complied on May 12, 2009, but the documents submitted to this Court do not include the progress reports. We can only

[3] Nor does the State address any specific provisions of the grievance procedure or offer evidence contradicting Taylor's allegations.

surmise these reports were some sort of *ex parte* communication. Other than these progress reports, there is no indication the State responded to Taylor's motion in any way. No motion to dismiss or for summary judgment was filed, and no hearing was held. The chronological case summary and documentation in the appendix suggest the trial court relied on the progress reports in denying Taylor's motion. (*See* Appellant's App. at 13, 42.) As his allegations facially support relief and there is no indication he had the opportunity to respond to the progress reports, we must conclude summary denial was inappropriate. Therefore, we reverse and remand for further proceedings.

Reversed and remanded.

BAKER, C.J., and BARNES, J., concur.