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IN THE
COURT OF APPEALS OF INDIANA

JOHN CHATMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-1005-PC-362
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael S. Jensen, Magistrate
Cause No. 49G23-0810-FB-233908

June 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

John Chatman appeals the post-conviction court's denial of his request for additional credit time for the completion of a substance abuse program while he was in the Marion County Jail awaiting trial.

We vacate the trial court's entry and dismiss this appeal.

FACTS AND PROCEDURAL HISTORY

Chatman was arrested and charged with possession of cocaine in October of 2008. He was sentenced, pursuant to a plea agreement, to six years executed in the Department of Corrections and credited with 191 days for time spent in confinement before sentencing and an additional 191 days for Class I credit time. *Appellant's App.* at 22.

Subsequently, Chatman filed An Amended Motion for Additional Earned Pretrial Confinement Credit Time, arguing that he should have been given credit for completing a substance abuse program while awaiting trial on the instant charges. The trial court denied Chatman's motion finding that "the substance abuse program for which Chatman requests credit time is not approved by the DOC or designated in statute. *Appellant's Case Summary.* Chatman now appeals.

DISCUSSION AND DECISION

A petitioner who has been denied post-conviction relief appeals from a negative judgment and must demonstrate on appeal that the evidence unerringly and unmistakably leads to a conclusion opposite that reached by the court. Ind. Post-Conviction Rule 1; *Ivy v. State*, 861 N.E.2d 1242, 1244 (Ind. Ct. App. 2007), *trans. denied*.

The State's argues and we agree that Chatman has failed to exhaust his administrative remedies. Chatman, argues that under Indiana Code section 35-38-3-2(b), the judgment of

conviction entered by the trial court "must include: (4) the amount of credit, including credit time earned, for time spent in confinement before sentencing . . . ." Chatman asserts that the issue before us is "not so much whether [he] is entitled to credit time but rather who should make the initial determination . . . ." *Appellant's Brief* at 6.

Indiana Code section 35-38-3-2(b) provides that the sentencing court determines the initial credit time accrued while awaiting trial. *Murphy v. State*, 942 N.E.2d 818, 819 (Ind. 2011) (*adopting in full Murphy v. State*, 930 N.E.2d 630, 632 (Ind. Ct. App. 2010), *trans granted*). The trial court is not limited to merely making recommendations concerning pretrial credit time, but is authorized to make initial determinations in that regard. *Robinson v. State*, 805 N.E.2d 783, 791 (Ind. 2004). Here, the trial court's original sentencing order makes no mention of educational or other additional credits, and there is no evidence that Chatman made the trial court aware of his substance abuse program certificate at the time of sentencing.

Indiana Code section 35-50-6-3.3 authorizes credit time for educational achievement including substance abuse programs. It does not explicitly designate the entity charged with the responsibility of making the initial determination to grant educational credit time, but, it is clear that a person who has been deprived of credit time may appeal to the DOC. Ind. Code § 35-50-6-5.5. Chatman has provided no evidence that he had requested credit time, that he had been denied credit time from the DOC, that he had exhausted his administrative remedies through the DOC, or that the substance abuse program in which he participated while at the Marion County Jail was a DOC-approved program.

Our legislature has determined that offender grievances arising out of administrative acts or omissions that affect the offender are to be resolved through a departmental grievance procedure that conforms to the requirements of Indiana Code chapter 11-11-1. Therefore, the PCR court lacked subject matter jurisdiction to do more than find that Chatman has failed to exhaust his administrative remedies by filing and pursuing to a conclusion a grievance on the failure to grant him additional credit time for the program he had completed while in the local jail. *See Young v. State*, 888 N.E.2d 1255, 1257 (Ind. 2008). Then, and only then, can Chatman request permission from the Court of Appeals to file a successive PCR and present evidence that the substance abuse program he completed qualifies under DOC guidelines. *Id.* We vacate the trial court's entry and dismiss this appeal.

Vacated and dismissed.

CRONE, J., and BRADFORD, J., concur.