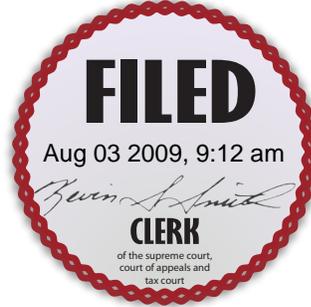


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

**ERIC D. SMITH**  
New Castle, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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ERIC D. SMITH, )  
 )  
Appellant-Plaintiff, )  
 )  
vs. )  
 )  
JILL MATTHEWS, JEFF WRIGLEY, )  
SGT. THOMPSON and DAVID ITTENBACH, )  
 )  
Appellees-Defendants. )

No. 33A04-0905-CV-239

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APPEAL FROM THE HENRY SUPERIOR COURT  
The Honorable Michael D. Peyton, Judge  
Cause No. 33D01-0903-PL-6

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**August 3, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Eric Smith appeals the trial court's order dismissing his complaint as frivolous litigation.

We affirm.

### ISSUE

Whether the trial court erred in dismissing his complaint.

### FACTS

On March 9, 2009, Smith, “a prisoner at the New Castle Correctional Facility” of the Indiana Department of Correction [DOC], filed the instant complaint. (App. 18). As defendants, he named Jill Matthews (“a former . . . employee of the New Castle facility mailroom”), Jeff Wrigley (“Superintendent” of the facility), and “Sgt. Thompson” and David Itterbach (employees of the facility). (App. 19). His complaint alleged that the defendants violated his First and Fourteenth Amendment rights when, in retaliation “for his filed lawsuits against them,” they “conspired with each other and wrote a false conduct report against Smith, alleging he abused the mail, and then railroaded him in the disciplinary hearing and appeal process by convicting him without any evidence to support the charge and denying him an impartial decision-maker.” (App. 17-18). He sought “compensatory and punitive damages,” as well as a trial court order that his “conviction for abusing the mail” be “expunged” and that he be “awarded . . . credit-class promotion.” (App. 19, 29).

On April 1, 2009, the trial court issued an order, citing Indiana’s “Frivolous Claim Law” as follows:

- (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim
  - (1) is frivolous;
  - (2) is not a claim upon which relief may be granted; or
  - (3) seeks monetary relief from a defendant who is immune from liability for such relief.
- (b) A claim is frivolous under subsection (a)(1) if the claim:
  - (1) is made primarily to harass a person; or
  - (2) lacks an arguable basis either in
    - (A) law; or
    - (B) fact.

Ind. Code § 34-58-1-2. The trial court reviewed Smith’s allegations and the relief he sought. It concluded “that his claim is frivolous with it having been made primarily to harass the Defendants and lacks an arguable basis either in law or in fact.” (App. 16). The trial court noted that in *Blanck v. Indiana Dep’t of Correction*, 829 N.E.2d 505, 507 (Ind. 2005), our Supreme Court reiterated “[t]hat for a quarter-century, our Court has held that DOC inmates have no common law, statutory, or federal constitutional right to review in state court DOC disciplinary decisions.” Expressly following “this authority,” the trial court dismissed Smith’s complaint.<sup>1</sup>

### DECISION

As Smith correctly notes, when we review the dismissal of a prisoner’s complaint pursuant to the Frivolous Claim Statute, we employ a *de novo* standard of review. *Smith*

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<sup>1</sup> We note that because the trial court dismissed Smith’s complaint at the screening stage, the State was never served with the complaint and has filed a Notice of Non-Involvement.

*v. Maximum Control Facility*, 850 N.E.2d 476, 479 (Ind. Ct. App. 2006) (citing *Smith v. Huckins*, 850 N.E.2d 480, 484 (Ind. Ct. App. 2006)).<sup>2</sup>

Smith first appears to question whether *Blanck* remains good law. In that regard, *Israel v. Indiana Dep't of Correction*, 868 N.E.2d 1123 (Ind. 2007), recently affirmed that Indiana trial courts lack jurisdiction to review DOC disciplinary decisions. Specifically, it reaffirmed that “agency action related to an offender within the jurisdiction” of the DOC is “not subject to judicial review.” *Id.* at 1124 (quoting *Blanck*, 829 N.E.2d at 510). Accordingly, *Israel* held that a complaint regarding a DOC disciplinary decision “should have been dismissed for lack of subject matter jurisdiction.” *Israel*, 868 N.E.2d at 1124.

Smith expresses his “strong[] agree[ment] with Justice Boehm’s dissent in *Israel*.” Smith’s Br. at 9. We draw his attention, however, to Justice Rucker’s concurrence -- in which he explains that despite his personal view that *Blanck* “was wrongly decided,” he concurs with the result in *Israel* because “*Blanck* and the authority on which it rests, is now settled law.” *Id.*

The Court of Appeals is “not free to change the law of the state contrary to precedent” of Indiana’s Supreme Court. *Marley v. State*, 747 N.E.2d 1123, 1130 (Ind. 2001). Smith’s complaint concerned “a prison disciplinary sanction.” *Israel*, 868 N.E.2d at 1124. Indiana courts do not have jurisdiction to review such a matter. *Id.* Therefore,

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<sup>2</sup> That Smith is able to cite his own previous lawsuits as authority is not surprising. In *Smith v. Wrigley*, No. 33D01-0902-PL-2 at \*9. (Ind. Ct. App. June 25, 2009), we noted that our Online Docket reflected more than fifty cause numbers under Smith’s name at that time, and that since being transferred to the New Castle facility in 2008, he had “filed more than one case per month.”

Smith's claim lacked an arguable basis in law, and the trial court did not err in dismissing it.

Affirmed.

BAILEY, J., and ROBB, J., concur.