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IN THE
COURT OF APPEALS OF INDIANA

CHARLES E. WATKINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 04A04-0905-CR-264
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BENTON CIRCUIT COURT
The Honorable Robert Hall, Special Judge
Cause No. 04C01-9609-CF-130

August 12, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Charles E. Watkins appeals the denial of his pro se Petition for Order to Discharge Probation, which he sought to have treated as a petition for post-conviction relief. Watkins presents the following consolidated and restated issue for review: Did the court err by summarily denying his petition?

We affirm.

On November 25, 1996, Watkins was sentenced in Benton County to 3 years for operating a motor vehicle while intoxicated with a prior conviction, a class D felony, and to a concurrent 1-year term for driving with a suspended license, a class A misdemeanor. All but 120 days were suspended to probation. Watkins subsequently violated his probation by committing another criminal offense. As a result, on April 12, 1999, his probation was extended by one year and ordered to be served on electronic monitoring through community corrections.

On May 23, 2000, Watkins violated probation by consuming alcohol and violated the terms of the community corrections program by being beyond the range of his electronic monitoring system. Based upon these violations, the State filed a second petition to revoke probation. Watkins and the State reached an agreement regarding revocation, which was accepted by the trial court on October 11, 2000. Pursuant to the agreement, Watkins was returned to probation and ordered to serve eleven months on work release "with good time meaning that [he would be] on the work release program for an actual five and one half (5 ½) months from the time it commences." *Appendix* at 23. The court directed Watkins to submit to the work release program on or before November 15, 2000. Finally, the revocation order

provided in relevant part that "*upon completion of the work release program*, [Watkins's] probation shall terminate." *Id*. at 23 (emphasis supplied).

Due to an unrelated conviction in Tippecanoe County for a crime[1] he committed while on probation in the instant case, Watkins did not begin, let alone complete, the work release program as directed. Rather, he has been serving a lengthy prison term for the Tippecanoe County offense. Watkins is reportedly scheduled to be discharged from prison in the latter part of this year.

In March 2009, Watkins filed the instant petition for order to discharge probation, arguing that despite the fact he had not served his time on work release, "his period of probation effectively expired on or about the 11th day of September 2001." *Id.* at 28. The trial court denied the petition on April 22, 2009 by written order without holding a hearing. The order provided in relevant part:

> To the extent the pleadings are considered to be a Petition for Post Conviction Relief, the court finds the same may be ruled on summarily.
>
> * * *
>
> In regard to any consideration that the pleadings filed by Charles E. Watkins can be considered a Petition for Post Conviction Relief, the court finds as follows:
>
> 1. Order revoking the probation of [Watkins] was entered on October 11, 2000, which was by agreement.
> 2. [Watkins] pursuant to agreement was to serve eleven (11) months on work release which would then complete his probation in this case.
>
> * * *
>
> 4. On July 17, 2003, this court entered an Order Denying Motion to Modify Terms of Commitment which was not appealed.[2]

[1] It appears Watkins may have committed and been convicted of multiple offenses. The record does not set forth the details of the Tippecanoe County charge(s) and conviction(s).

[2] In his July 2003 motion to modify the terms of commitment, Watkins asked the court to order that his work release was to run concurrent with his term of imprisonment in the Tippecanoe matter. The State responded,

> 5. [Watkins], as shown in his pleadings, had additional convictions for felonies in other counties while on probation in this case and prior to the service of the work release obligation imposed by agreement in this case.
> 6. [Watkins] with multiple convictions is subject to the provisions of I.C[.] 35-50-1-2[.]
>
> The court concludes as follows:
>
> 1. The subsequent convictions…were acts which result in a tolling of the time for the completion of the sentence in this case.
> 2. A defendant may not avoid the obligations imposed as a result of a conviction and sentence in one case by committing additional crimes and serving his obligation as a result of any such conviction(s).
> 3. To the extent the pleadings…in this case are considered to be a Petition for Post Conviction Relief, the same should be denied….

Appendix at 10-11 (footnote supplied). Watkins now appeals, pro se.

On appeal, Watkins does not dispute that he never served his time on work release. He argues, however, that his term of probation expired on or about October 2001 because the State failed to file a petition to revoke his probation due to his subsequent conviction and incarceration resulting from the Tippecanoe case. Watkins further asserts that the trial court erred by summarily denying his petition without a hearing.

We initially observe that a petition for post-conviction relief may be summarily denied "'if the pleadings and the record conclusively demonstrate that there is no genuine issue of material fact and the petitioner is not entitled to relief.'" *Ivy v. State*, 861 N.E.2d 1242, 1244-45 (Ind. Ct. App. 2007) (quoting *Godby v. State*, 809 N.E.2d 480, 482 (Ind. Ct. App. 2004), *trans. denied*), *trans. denied*. In other words, if the court is able to determine, after reading

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and the trial court agreed, that the two could not be served concurrently because Watkins was on probation in the instant case at the time he committed the offense in Tippecanoe County. *See* Ind. Code Ann. § 35-50-1-2(d) (West, PREMISE through 2009 Public Laws approved and effective through 4/20/2009).

the petition and consulting the record, that there is no factual issue in dispute, a summary denial of a petition for post-conviction relief may be proper. *Ivy v. State*, 861 N.E.2d 1242. Such is the case here.

The relevant facts are not in dispute. Rather, it is the legal effect of the facts that is disputed by Watkins. As set forth above, he places no import on the fact that his subsequent conviction and incarceration related to the Tippecanoe case prevented him from completing work release in the instant case. In effect, he claims that his probation expired by operation of law eleven months after the date he was ordered to report to work release, regardless of the fact he did not complete work release as directed. Watkins's pro-se argument is without merit.

As previously determined by the trial court, Watkins's sentences were required to be served consecutively because he committed the Tippecanoe County offense while he was on probation in the instant case. *See* I.C. § 35-50-1-2(d). It is well settled that where a defendant receives consecutive sentences, the defendant is only allowed credit time against the total or aggregate of the terms. *See, e.g.*, *Stephens v. State*, 735 N.E.2d 278 (Ind. Ct. App. 2000) (observing that otherwise defendant would effectively receive concurrent sentences, rather than consecutive sentences), *trans. denied*. Moreover, in the specific context of probation, we have recently held as follows: "Given the rehabilitative purpose of probation, a process which can only be accomplished outside the confines of prison, it is axiomatic that '[o]ne may not be simultaneously on probation and serving an executed sentence.'" *Hart v. State*, 889 N.E.2d 1266, 1271 (Ind. Ct. App. 2008) (quoting *Thurman v. State*, 162 Ind. App.

576, 320 N.E.2d 795, 797 (1974)). Thus, while Watkins was imprisoned for the conviction out of Tippecanoe County, his probation in the instant case was suspended as a matter of law. The summary denial of his petition for order to discharge probation was proper.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.