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.

FILED
Aug 24 2011, 9:19 am
CLERK
of the supreme court, court of appeals and tax court

APPELLANT PRO-SE:

ANTHONY W. TAYLOR
Bunker Hill, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ELIZABETH ROGERS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ANTHONY W. TAYLOR,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 52A02-1010-MI-1252
	)	
MARK SEVIER,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable Robert A. Spahr, Judge
Cause No. 52C01-1006-MI-296

August 24, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-petitioner Anthony Taylor appeals the dismissal of his petition for writ of habeas corpus. Specifically, Taylor argues that he is entitled to immediate release from his parole violation because the Indiana Parole Board (Parole Board) did not hold his parole revocation hearing within sixty days of his sentencing as required under Indiana Code section 11-13-3-10. Concluding that the statute does not apply to Taylor because he was not incarcerated due solely to a parole violation, we affirm the judgment of the trial court.

FACTS

While on parole, on August 8, 2006, Taylor was arrested for unlawful possession of a firearm by a serious violent felon, a class B felony, and unlawful use of body armor, a class D felony. On April 23, 2007, he was convicted as charged and ordered to serve an aggregate sentence of fifteen years.[1] After notification and a hearing, on March 16, 2010, the Parole Board revoked Taylor's parole because of the new convictions. Thus, Taylor was ordered to serve the balance of his sentence.

On June 18, 2010, Taylor petitioned for a writ of habeas corpus seeking release from his parole violation.[2] The State filed a motion to dismiss and, following a hearing, on September 29, 2010, the trial court granted the State's motion. Taylor now appeals.

DISCUSSION AND DECISION

Taylor contends that the trial court erred when it granted the State's motion to dismiss and argues that he is entitled to immediate release from his parole violation because the Parole

[1] Originally, Taylor was also adjudicated a habitual offender and ordered to serve an aggregate sentence of thirty-five years. Taylor's habitual offender status was reversed on appeal, see Taylor v. State, 878 N.E.2d 542 n.1. (Ind. Ct. App. 2007), and the case was remanded to the trial court, which vacated the habitual offender determination and enhancement, resulting in the fifteen-year sentence.

[2] Respondent Sevier is Superintendent of the Miami Correctional Facility.

Board did not hold a revocation hearing within sixty days of his sentencing as required by Indiana Code section 11-13-3-10.

We review a trial court's decision to grant a motion to dismiss under Indiana Trial Rule 12(B)(6) de novo. Charter One Mortgage Corp. v. Condra, 865 N.E.2d 602, 604 (Ind. 2007). When reviewing a motion to dismiss, we view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the nonmovant's favor. Id. A complaint may not be dismissed for failure to state a claim upon which relief can be granted unless it is clear on the face of the complaint that the complaining party is not entitled to relief. Reich v. Lincoln Hills Christian Church, Inc., 888 N.E.2d 239, 242 (Ind. Ct. App. 2008).

Indiana Code section 11-13-3-10, which governs parole revocation hearings, provides that " a parolee who is confined due to an alleged violation of parole shall be afforded a parole revocation hearing within sixty (60) days after the parolee is made available to the department by a jail or state correctional facility . . . ." The sixty day requirement only applies to a parolee solely confined for an alleged parole violation. Lawson v. State, 845 N.E.2d 185, 186 (Ind. Ct. App. 2006). Here, the record reflects that Taylor was imprisoned on the new felony charges and the subsequent conviction and sentence during the entire time leading up to the revocation hearing. Appellant's App. p. 116-17, 170. Therefore, the Parole Board was not required to conduct the revocation hearing within sixty days, and the trial court properly dismissed Taylor's petition for writ of habeas corpus.

The judgment of the trial court is affirmed.

KIRSCH, J., and BROWN, J., concur.