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.

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IN THE
COURT OF APPEALS OF INDIANA

IRVING DILLON,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A02-0511-PC-1027
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49G01-0305-FB-86763

August 29, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

Darden, Judge

STATEMENT OF THE CASE

Irving Dillon, pro se, appeals the denial of his motion for credit time.

We reverse and remand with instructions.

ISSUE

Whether the post-conviction court had jurisdiction to consider Dillon's motion.

FACTS

On September 13, 2004, a jury found Dillon guilty of robbery, as a class C felony, and criminal confinement, as a class D felony. On October 8, 2004, the trial court sentenced Dillon to eight years on the robbery conviction, with two years suspended, and three years on the criminal confinement conviction. The trial court ordered the sentences to be served concurrently.

Dillon enrolled in the American School on February 14, 2005, and completed the high school diploma program on August 1, 2005. On August 12, 2005, a verification of completion of education form was completed.

On September 15, 2005, Dillon filed a petition for additional credit time, seeking credit time pursuant to Indiana Code section 35-50-6-3.3. On September 20, 2005, the post-conviction court denied Dillon's petition. A notation at the top of the petition reads, "Denied. The DOC has jurisdiction over credit time." (App. 1). Dillon appealed.

On May 15, 2006, this Court ordered the post-conviction court to issue an order clarifying why Dillon's petition was denied. The order was necessary to enable this Court to ascertain whether the trial court denied Dillon's petition because it concluded it did not have

jurisdiction to entertain his petition and review the DOC's determination, or because upon review, the post-conviction court concluded that the DOC correctly denied Dillon credit time.

On May 17, 2006, the post-conviction court filed its Order on the Petitioner's Petition for Additional Credit Time not Previously Awarded by Department of Corrections [sic] (the "Order"), with findings of fact and conclusions of law. The post-conviction court found the following:

> 1. In the Petitioner's motion, he states that he completed an educational class while incarcerated at the Indiana Department of Correction.
>
> 2. The documents attached to the petition do not appear to be a formal denial of credit time from the Indiana Department of Corrections [sic]. However, from the documents attached to the Petitioner's motion, it appears that the Department of Corrections [sic] DENIED the Petitioner's request for credit time for completion of the educational class.

(App. 24-25). The post-conviction court then concluded:

> 3. In Sander v. State, 816 N.E.2d 75 (Ind. Ct. App. 2004), the Court held that when a petitioner is requesting credit time for completion of educational classes that the Indiana Department of Correction ("IDOC") should determine this issue rather than the trial court because the trial court cannot make this determination without the assistance of the IDOC. Thus, in Sanders [sic] the trial court properly DENIED the petitioner's request for credit time for completion of educational courses. Id.
>
> 4. The Court finds that based on the limited information provided it appears that the class completed by the Petitioner was not a class approved for the purposes of receiving credit time for completion.

(App. 25).

Dillon filed an amended appellant's brief on June 12, 2006. The State did not file an amended appellee's brief.

DECISION

Dillon asserts the post-conviction court erred in denying his motion for credit time. We, however, find that the post-conviction court lacked subject-matter jurisdiction to hear Dillon's case.[1]

"Subject matter jurisdiction refers to the power of courts to hear and decide a class of cases." Kondamuri v. Kondamuri, 799 N.E.2d 1153, 1156 (Ind. Ct. App. 2003), trans. denied. A court has subject matter jurisdiction where the claim before it falls within the general scope of authority conferred upon the court by the constitution or by statute. Id.

"Post-conviction relief is a product of the Indiana Supreme Court and is, therefore, entirely defined in scope by the post-conviction rules it has adopted." Members v. State, No. 49A04-0510-PC-569, slip op. at 4 (Ind. Ct. App. July 27, 2006); Samuels v. State, 849 N.E.2d 689, 691 (Ind. Ct. App. 2006). Where, as here, the sole claim is that the DOC improperly denied an offender educational credit time, the post-conviction court lacks authority over the case. See id.

Moreover, "[a] failure to exhaust administrative remedies deprives a trial court of subject matter jurisdiction over a complaint challenging agency action." Howard, 832 N.E.2d at 531; see also Members, No. 49A04-0510-PC-569 at 7; Samuels, 849 N.E.2d at 692 (finding post-conviction court lacks subject-matter jurisdiction where defendant has failed to

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[1] The State in this case did not challenge the post-conviction court's jurisdiction. The requirement of subject matter jurisdiction, however, is such that "[e]ven if no party raises the issue, 'Where lack of subject matter jurisdiction in the original tribunal is apparent from the record, it is the duty of the reviewing court to raise and determine the issue sua sponte.'" City of Marion v. Howard, 832 N.E.2d 528, 531 (Ind. Ct. App. 2005)

exhaust available remedies within DOC). While it is the trial court that determines an offender's initial credit time, "modification to that credit time-which includes modification because of educational credit-is the responsibility of the DOC." Members, No. 49A04-0510-PC-569 at 6; Samuels, 849 N.E.2d at 692. Thus, any application for education credit time must be made to the DOC. See Sander, 816 N.E.2d at 78. Furthermore, any challenge to the DOC's denial of educational credit time must be submitted to the DOC as "grievances arising out of administrative acts that affect an offender are to be resolved through a departmental grievance procedure." Members, No. 49A04-0510-PC-569 at 6; Samuels, 849 N.E.2d at 692. Only after an offender has exhausted his administrative remedies with the DOC may he pursue relief within the judicial system. Id. In this case, Dillon has not shown that he has exhausted the administrative remedies available to him.[2]

The post-conviction court lacked subject-matter jurisdiction over this case. Accordingly, we hereby reverse and remand with instructions to the post-conviction court to dismiss Dillon's case.

Reversed and remanded with instructions.

KIRSCH, C.J., concurs.
SULLIVAN, J., dissents with separate opinion.

(quoting Town Council of New Harmony v. Parker, 726 N.E.2d 1217, 1223 n.8 (Ind. 2000)), trans. denied, cert. denied, 126 S. Ct. 2358 (2006).

[2] Regarding his request for educational credit time, we note that Dillon's appendix only contains a Verification of Completion of Education/Vocation/Substance Abuse Program form, an email from a "John Nally," the first page of a letter from American School, describing the programs available, and a letter from Dillon to the post-conviction court. We also note that Dillon has not verified the accuracy of these documents as required by Indiana Appellate Rule 50(B)(1)(f).

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	)	
Appellee.	)	

SULLIVAN, Judge, dissenting

For the reasons set forth in my dissent in Samuels v. State, 849 N.E.2d 689, 692-93 (Ind. Ct. App. 2006), trans. pending, I respectfully depart from my colleagues rationale for reversing with instructions to dismiss Dillon's petition for post conviction relief. As I stated in Samuels, I do not believe Dillon's claim for educational credit is a "grievable" claim within the doctrine of exhaustion of administrative remedies.

Nevertheless, I would not hold that Dillon is entitled to the educational credit claimed. Rather than dismissal of the Post Conviction Petition for lack of subject matter jurisdiction, I would hold that the post conviction court properly denied the petition.

Dillon did not establish that the American School "maintains standards of instruction substantially equivalent to those of public high schools located in [Indiana]." McGee v.

State, 790 N.E.2d 1067, 1070 (Ind. Ct. App. 2003) (quoting Ind. Code § 20-12-21-3(3)), trans. denied. His claim for post conviction relief fails for lack of proof.