

STATEMENT OF THE CASE

Dennis Peterson, pro se, appeals from the trial court's denial of his petition for additional credit time. We address a single dispositive issue on appeal, namely, whether Peterson's appeal should be dismissed for failure to comply with procedural requirements.

We dismiss.

FACTS AND PROCEDURAL HISTORY

On April 12, 1984, the trial court entered judgment of conviction on a jury verdict that found Peterson guilty of Burglary, as a Class A felony. On May 14, 1984, the court sentenced him to fifty years. On March 16, 2009, Peterson filed a pro se petition for additional credit time and a memorandum of law in support of that petition. On March 20, the State filed its response to Peterson's petition.¹ The court denied Peterson's petition without a hearing on March 31, stating:

The Court, having considered Defendant's Petition for Additional Credit Time, now finds that [Indiana Code Section] 35-50-6-3.3 does not state that an individual can receive additional credit time with the completion of any program approved by the Department of Correction, but rather imposes strict limits on the total amounts of credit time an offender can receive for programs of various kinds; that awards of credit time are solely in the province of the Department of Correction and must conform to the statutory standards set forth in [Indiana Code Section] 35-50-6-3.3; and that Indiana law makes no provision for courts to grant additional credit time.

Appellant's App. at 36. Peterson now appeals.

¹ The parties have not included in the record on appeal a copy of the State's response to the petition for additional credit time.

DISCUSSION AND DECISION

Peterson contends that the trial court abused its discretion when it denied his petition for additional credit time. We initially observe that Peterson is pro se on appeal. Pro se litigants are held to the same standard as trained legal counsel and are required to follow procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2005), trans. denied. It is an appellant's duty to provide a record that reflects the error alleged. Williams v. State, 690 N.E.2d 162, 176 (Ind. 1987). To the extent the record is inadequate, it results in waiver of the issue. Id.

Indiana Code Section 35-50-6-3.3 provides, in relevant part, as follows:

(a) In addition to any credit time a person earns under subsection (b) or section 3 of [Indiana Code Chapter 35-50-6,] a person earns credit time if the person:

- (1) is in credit Class I;
- (2) has demonstrated a pattern consistent with rehabilitation; and
- (3) successfully completes requirements to obtain one (1) of the following:
 - (A) A general education development (GED) diploma under [Indiana Code Chapter] 20-20-6, if the person has not previously obtained a high school diploma. . . .

(b) [A] person may earn credit time if, while confined by the department of correction, the person:

- (1) is in credit Class I;
- (2) demonstrates a pattern consistent with rehabilitation; and

(3) successfully completes requirements to obtain at least one (1) of the following:

(A) A certificate of completion of a vocational education program approved by the department of correction.

* * *

(C) A certificate of completion of a literacy and basic life skills program approved by the department of correction.

* * *

(f) A person does not earn credit time under subsection (a) unless the person completes at least a portion of the degree requirements after June 30, 1993.

(g) A person does not earn credit time under subsection (b) unless the person completes at least a portion of the program requirements after June 30, 1999.

When an offender achieves an educational milestone after sentencing, the initial application for educational credit time must be made to and the ruled upon by the Department of Correction (“DOC”). Burks-Bey v. State, 903 N.E.2d 1041, 1043 (Ind. Ct. App. 2009); Sander v. State, 816 N.E.2d 75, 78 (Ind. Ct. App. 2004). If an offender exhausts all of his administrative remedies through the DOC and still fails to obtain the relief sought, Indiana’s courts then have subject matter jurisdiction over a request for educational credit time. Burkes-Bey, 903 N.E.2d at 1043. The burden is on the offender to show what the relevant DOC procedures are and that he has exhausted them at all levels. Id. at 1043-44. Absent evidence in the record to meet that burden, a court cannot rule on the merits of an offender’s motion for credit time. See Young v. State, 888 N.E.2d 1255, 1257 (Ind. 2008).

Here, Peterson contends that he is entitled to credit time for the following coursework: a high school equivalency certificate (“G.E.D.”) in 1979, a basic drafting course in 1982, an advanced drafting course (date unknown), a FEMA course entitled “An Introduction to Hazardous Materials” in 2007, a FEMA course entitled “Effective Communication” in 2007, and a Home Bible Studies 4 Course Series from Gospel Echoes Team in 2007. In its brief on appeal, the State argues that Peterson has waived review because he did not exhaust his administrative remedies.² We must agree with the State.

In response to the State’s brief, Peterson filed a supplemental appendix, which contains a copy of the formal grievance that he filed in March 2007 and a copy of the resulting Offender Grievance Response Report. In the formal grievance, Peterson complained that he had been denied educational credit for the “past G.E.D., basic architectural certificates, infection control certificate, and all other certificates in [his] institutional packet or in [his] possession.” Supp. Appellant’s App. at 1. The April 20 response to Peterson’s grievance states that his request for credit time was denied based on the education supervisor’s explanation that he had

advised [Peterson] that since [he] did not earn these certificates at [the Correctional Industrial Facility] it is the responsibility of the institution where [Peterson] earned them to submit a certificate of verification of completion. I concur with the [Education Supervisor] and suggest that you write to the Education Supervisor of the institution(s) at which you received

² The State argues that, because of Peterson’s failure to show that he exhausted his administrative remedies, the trial court “did not have subject matter jurisdiction to address” Peterson’s motion for additional credit time. But, as discussed further below, Peterson’s failure to comply with procedural prerequisites does not implicate subject matter jurisdiction, or, jurisdiction over a general class of cases. Rather, such deficiencies are legal errors that courts historically referred to as “jurisdiction over the case.” See Packard v. Shoopman, 852 N.E.2d 927, 930 (Ind. 2006).

the certificates requesting that individual [to] submit verifications of completion.”

Id. Peterson appealed from that response, and the April 30 response states:

The offender has a legitimate grievance. [The Education Supervisor] needs to work with the offender and the Supervisor of Education at the institution where the offender earned the credit time in order to have that institution submit the certificate of verification of completion. [The Education Supervisor here] can assist the offender with this.

Id.

The record on appeal contains certificates of verification of completion showing that Peterson obtained certificates to prove his educational achievements. But, in his petition for additional credit time, Peterson did not allege that he had submitted those certificates to the DOC with a renewed request for credit time or that the DOC had denied such a request. Instead, he alleged that the DOC’s “Correctional Industrial Facility Educational Supervisor instructed [him] to file for the educational credit time through the court system.” Appellant’s App. at 24. And in his memorandum of law in support of the petition, he explained that he was “not requesting additional credit time for any degree, but [was] requesting and entitled to the credit time for the certificates and diploma earned while [he] has been incarcerated” Id. at 34 (emphasis in original). Thus, again, Peterson has neither alleged nor shown that he submitted the certificates to the DOC with a request for credit time or that the DOC denied that request for credit time. And Peterson has not shown that he exhausted his administrative remedies in appealing from the denial of a renewed request for credit time. As a result, we cannot consider his appeal. See Young, 888 N.E.2d at 1257.

By way of instruction, we note that our supreme court, addressing the same issue, has admonished another petitioner for credit time as follows:

If Young hopes to prevail on his claim after he has properly presented it to the Court via post-conviction procedures, he must present evidence supporting each portion of it with his proposed successive petition for post-conviction relief filed along with his Successive Post-Conviction Relief Rule 1 Petition Form pursuant to P-C.R. 1(12) (if this were Young's first post-conviction petition, he would present it directly to the post-conviction court). Here, for example, Young must show in the first place what the relevant DOC administrative grievance procedures are, and then that he has exhausted them at all levels. Young must also present evidence of his diploma and the credentials of the school that awarded it. He must show that he meets each requirement of any necessary statute (for example, I.C. § 35-50-6-3.3). Just as in his other appeal decided today, even if Young's claim were properly before a court, the court would not be able to decide it without more information.

Id. Should Peterson wish to renew his application for credit time, he must make that application to the DOC and exhaust all administrative remedies there before petitioning the court to review any denial of that renewed request for credit time.³ See id.

Dismissed.

KIRSCH, J., and BARNES, J., concur.

³ In the event Peterson elects to submit another request for credit time to the DOC, we observe that credit time cannot be awarded for a diploma, such as a G.E.D., "unless the person completes at least a portion of the program requirements after June 30, 1993." Ind. Code § 35-50-6-3.3(f). Similarly, credit time cannot be awarded under Indiana Code Section 35-50-6-3.3(b), regarding career, technical, or literacy and basic life skills training, "unless the person completes at least a portion of the program requirements after June 30, 1999." Ind. Code § 35-50-6.3.3(g).