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FILED
Sep 25 2009, 9:24 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

CHANSE T. STARR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 33A04-0902-CV-81
	)	
JEFFERY WRIGLEY, SUPERINTENDENT OF THE NEW CASTLE CORRECTIONAL FACILITY,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Michael D. Peyton, Judge
Cause No. 33D01-0812-MI-0029

SEPTEMBER 25, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Chanse Starr appeals the denial of his habeas corpus petition. We affirm.

ISSUES

Starr raises five issues for our review, which we renumber and restate as:

I. Whether Starr was improperly denied a right to a hearing on his motion.

II. Whether Starr was improperly denied earned credit time after he allegedly completed a substance abuse program.

III. Whether Starr was improperly denied jail time credit.

FACTS AND PROCEDURAL HISTORY

On September 12, 2001, Starr was served a bench warrant for violation of probation. The warrant had been issued by the Kosciusko Superior Court No. 1 under Cause No. 43D01-9902-CF-25 ("CF-25"), and it appears that the warrant was served at the Allen County Jail, where Starr was incarcerated for driving while intoxicated. On March 13, 1002, the Kosciusko Superior Court revoked Starr's probation because of the drunk driving charge.

On January 7, 2002, prior to the revocation by the Kosciusko Superior Court, Starr was charged with five counts of criminal confinement and one count of battery in the Allen Superior Court under Cause No. 02D04-0201-FD-10 ("DF-10"). These charges arose out of events that allegedly occurred on December 29 and 30, 2001. In a

memorandum decision dated June 30, 2003, this court affirmed convictions of criminal confinement under DF-10.

On December 3, 2008, Starr filed his petition for writ of State habeas corpus relief in Henry Superior Court No. 1. The petition alleges that Starr was in the Allen County jail from September 12, 2001, to March 13, 2002 and that he is entitled to credit time for that stay. The petition further alleges that during those months he began and completed the Allen County's substance abuse program and that he is entitled to credit time for completion of the program.

The State responded to the petition with a motion to dismiss and an answer. Attached to the response were copies of judgments of conviction, chronological case summaries from the two Allen County criminal cases, and a communication from the Department of Correction ("DOC").

On January 6, 2009, the trial court summarily entered the following order:

> On December 3, 2008, the Petitioner, *pro se*, filed his Petition for Writ of Habeas Corpus Relief. On the same date, the Court entered an Order issuing Writ of Habeas Corpus. The Respondents through the Henry County Prosecuting Attorney on January 6, 2009, filed their response in the form of a Motion to Dismiss and Answer to Petition for Writ of Habeas Corpus. The Court, having examined both the Writ and the Response filed by the Respondents, does now find that the issues raised by the Petitioner require the dismissal of the petition.
>
> IT IS THEREFORE ORDERED BY THE COURT that the Petition for Writ of habeas corpus is hereby dismissed.

(Appellant's App. at 32).

Additional facts are disclosed below.

DISCUSSION AND DECISION

I. RIGHT TO A HEARING UNDER IND. CODE § 34-25.5-1-1

Starr contends the trial court erred in not holding a hearing on his motion. He argues that Ind. Code § 35-25.5-1-1 requires the hearing and that summary disposition is a violation of his right to due process under the Fourteenth Amendment to the Federal Constitution.

Initially, we note that Ind. Code § 35-35.5-1-1, states that a person "may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered from the restraint if the restraint is illegal." We have held that the statute does not require an evidentiary hearing. *Pallet v. State*, 901 N.E.2d 611, 613 (Ind. Ct. App. 2009), *trans. denied*. Furthermore, *Hendrixson v. Lash*, 258 Ind. 550, 282 N.E.2d 792 (Ind. 1972), *cert denied*, 410 U.S. 967 (1973), the case cited by Starr for his due process claim, does not support such a claim. Indeed, the case holds that a person who is not in custody has no right under either the United States or Indiana constitutions to a judicial hearing. *See id.* at 792-793 (holding that the appellant was not required a hearing on habeas corpus when he was spending a portion of his supposed jail time as an escapee "on vacation in sunny Florida (during season)."

As discussed below, there is no material issue of fact as to Starr's presence outside the jail during the time he claims he was incarcerated. Accordingly, the trial court was not required by either statute or the Federal Constitution to afford him a hearing.

Having decided this issue, we note that in dismissing Starr's petition under T.R. 12 the trial considered matters outside the pleadings. Accordingly, T.R. 12(B) requires that

the motion shall be treated as one for summary judgment and disposed of pursuant to T.R. 56. Summary judgment is appropriate "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." T.R. 56(C). Here, Starr makes no argument on appeal that any genuine issues of material fact exist that would require a hearing and/or preclude the grant of summary judgment.

II. CREDIT TIME FOR SUBSTANCE ABUSE PROGRAM

Starr contends that the trial court erred in denying additional credit time for a substance abuse program that he allegedly completed during his stay in the Allen County Jail.[1] In support of his contention, he cites Ind. Code § 35-50-6-3.3.

The aforementioned statute clearly states that it applies to the completion of a program while in the custody of the DOC. Furthermore, it provides that a trial court does not have subject matter jurisdiction to consider a request for credit time until a DOC inmate exhausts all administrative remedies with the DOC. Here, Starr is not referring to an approved program that he completed while confined by the DOC. In addition, he did not allege exhaustion of administrative proceedings either in his petition or on appeal.

Finally, Ind. Code § 35-50-6-3.3(b)(3)(B) clearly provides that a person may earn credit time if, while confined by the DOC, the person obtains a "certificate of completion of a substance abuse program approved by the [DOC]." The Allen County program is not a program approved by the DOC.

The trial court did not err in denying Starr's petition on this issue.[2]

[1] The evidence submitted by Starr consists of an unsigned certificate of completion.

III. CREDIT TIME WHILE INCARCERATED

Starr contends that the trial court erred in not crediting him for time spent incarcerated from September 12, 2001, the date he was arrested under CF-25, until March 13, 2002, the date he was sentenced on his probation violation by the Kosciusko Superior Court. Starr argues that he was in continuous custody during this time.

On January 7, 2002, Starr was charged with five counts of criminal confinement and one count of battery from events that arose on December 29 and 30, 2001. Starr was subsequently convicted on three of the confinement charges and on the battery charge. Starr appealed two of the confinement convictions, and in an unpublished decision affirming the convictions, this court noted that Starr had been living with a girlfriend for approximately one month before the events that led to his convictions. *Chanse Starr v. State*, No. 02A03-0206-CR-177 *2 (Ind. Ct. App. June 30, 2003).

Additionally, the DOC received the following information from Kosciusko County regarding Starr's claim that he was continually incarcerated at the Allen County Jail from September 12, 2001 to March 13, 2002:

> Starr was to have 24 days of jail time credit for the probation violation in 43D01-9902-CF-25. We provided him with that credit time. Starr claims he was continuously incarcerated from 9/12/01 until 3/13/02. That is not true. The parole violation petition was filed on 7/9/01, the bench warrant was served on 9/12/01. It appears Starr was in the Allen County Jail at that time, being jailed for operating while intoxicated, cause 02D04-0108-CM-5863, for which he was sentenced on 2/8/02. He must have been released from custody, because after September 12, 2001, he was again arrested for cause number 02-D04-0201-FD-10 for events which occurred December 29 and 30, 2001. In any event, the Allen County Superior Court awarded Starr

[2] In this appeal, Starr also raises issues pertaining to credit time in DF-10 and in 02D04-0701-DF-8. These issues were not raised in Starr's petition, and they are therefore waived. *See e.g.*, *Whitfield v. State*, 699 N.E.2d 666, 668 (Ind. Ct. App. 1998), *trans. denied* (holding that an argument raised for the first time on appeal is waived).

> 118 days of jail time on this cause. Accordingly, it appears that all appropriate jail time credit has already been provided to Mr. Starr.

(Appellee's App. at 3).

There appears to be no issue of genuine fact concerning whether Starr was continually incarcerated during the period claimed in his petition. Indeed, Starr does not respond to the documentary evidence that disproves his claim. The trial court did not err in denying Starr's petition on this issue.

CONCLUSION

The trial court did not err in denying the various requests made in Starr's petition for habeas corpus.

Affirmed.

ROBB, J., and VAIDIK, J., concur.