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IN THE
COURT OF APPEALS OF INDIANA

EARL BUDD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 77A05-0906-CV-316
	)	
BRUCE LEMMON and ALAN FINNAN,	)	
	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE SULLIVAN SUPERIOR COURT
The Honorable Robert Springer, Judge
Cause No. 77D01-0812-MI-473

October 13, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Earl Budd ("Budd") appeals the trial court's dismissal of his petition for a writ of habeas corpus for lack of subject matter jurisdiction. He argues that the trial court erred when it dismissed his petition for a writ of habeas corpus.

We affirm.

Facts and Procedural History

In 1983, Budd was convicted of one count of attempted murder and one count of criminal deviate conduct and sentenced to two concurrent terms of fifty years. On December 23, 2008, Budd filed a petition for writ of habeas corpus alleging that he was being held in custody in direct violation of the United States Constitution. He further alleged that the Indiana Department of Correction's ("DOC") policy regarding the restoration of credit time that was deprived due to disciplinary action is unconstitutional.[1] Budd claimed that he was originally scheduled to be released on September 14, 2008, because of education credit time. However, Budd believes that the new DOC policy, effective in 2009, caused his sentence to be unlawfully extended to June 10, 2010. He believes that he is entitled to the restoration of approximately 2,094 days of credit time and that he should be immediately released.

On January 26, 2009, Budd filed a motion for preliminary injunction. On March 30, 2009, the Appellees filed a response to the motion for preliminary injunction and a motion to dismiss the petition. On May 14, 2009, the trial court dismissed Budd's petition. Budd appealed.

[1] Budd raises the issue of the application of new penal rules which affect his credit time. He argues that his credit time should be governed by the penal rules that were in effect at the time he was sentenced. However, Budd fails to present any statutory or case law that would support that position. Budd has waived this issue for failing to put forth a cogent argument on appeal. See Ind. Appellate Rule 46(A)(8).

Discussion and Decision

Budd argues that the trial court erred in finding that it had no subject matter jurisdiction and dismissing his petition for writ of habeas corpus. Indiana Code section 34-25.5-1-1 (1999) provides that "[e]very person whose liberty is restrained, under any pretense whatever, 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." "The purpose of the writ of habeas corpus is to bring the person in custody before the court for inquiry into the cause of restraint." O'Leary v. Smith, 219 Ind. 111, 113, 37 N.E.2d 60, 60 (1941). "One is entitled to habeas corpus only if he is entitled to his immediate release from unlawful custody." Hawkins v. Jenkins, 268 Ind. 137, 139, 374 N.E.2d 496, 498 (1978). "[A] petitioner may not file a writ of habeas corpus to attack his conviction or sentence." Hawkins, 268 Ind. at 140, 374 N.E.2d at 498.

Our standard of review on a motion to dismiss for lack of subject matter jurisdiction is dependent upon the proceeding in the lower court. Jennings v. St. Vincent Hosp. and Health Care Center, 832 N.E.2d 1044, 1050 (Ind. Ct. App. 2005), trans. denied. As in this case, when the lower court does not conduct an evidentiary hearing and rules solely on a paper record, we review the lower court's decision de novo. Id. We will give no deference to the lower court's factual findings or judgment because we are in the same position as the lower court to determine whether it has jurisdiction, as the lower court had no opportunity to evaluate the character and credibility of witnesses. Id.

"Subject matter jurisdiction is the power of a court to hear a class of cases." In re Paternity of M.G.S., 756 N.E.2d 990, 997 (Ind. Ct. App. 2001), trans. denied. Whether a

court has subject matter jurisdiction "depends neither on the intricacies of the pleadings nor on the correctness of any decision made by a court." Strong v. Jackson, 781 N.E.2d 770, 772 (Ind. Ct. App. 2003), trans. denied. When determining whether a court has subject matter jurisdiction, we must determine "whether the claim advanced falls within the general scope of authority conferred upon the court by constitution or statute." Blanck v. Ind. Dep't of Corr., 829 N.E.2d 505, 508 (Ind. 2005).

Budd brings this challenge pursuant to Indiana Code section 35-50-6-5 (2004), which relates to the deprivation of credit time. Specifically, he refers to subsection (c) which states that "[a]ny part of the credit time of which a person is deprived under this section may be restored." In Blanck, our supreme court noted the "long-standing precedent precluding judicial review of prison disciplinary decisions." Blanck, 829 N.E.2d at 507. Budd's petition for a writ of habeas corpus is clearly a request to review the disciplinary procedures of the DOC as they relate to the deprivation and/or restoration of his credit time, and we do not review prison disciplinary decisions. Id.

Affirmed.

DARDEN, J., and ROBB, J., concur.