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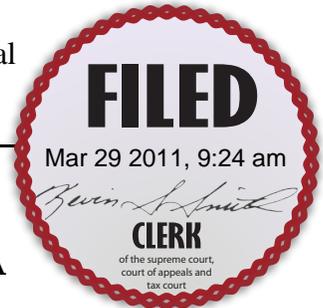
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**IN THE  
COURT OF APPEALS OF INDIANA**

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EDDIE J. WILLIAMS, JR., )  
 )  
Appellant-Petitioner, )

vs. )

STATE EMPLOYEES' APPEALS )  
COMMISSION, )  
 )  
Appellee-Respondent. )

No. 49A02-1011-MI-01269

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Thomas J. Carroll, Judge  
Cause No. 49D06-0812-MI-56332

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**March 29, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Petitioner Eddie Williams, Jr. appeals the trial court's dismissal of his petition for judicial review of a decision by the Appellee-Respondent State Employees' Appeals Commission (SEAC) upholding the termination of his employment by Pendleton Juvenile Correctional Facility. Upon appeal Williams claims that the trial court erred in concluding that he had failed to file a timely agency record. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Williams was employed as a Psychiatric Social Services Specialist at the Pendleton Juvenile Correctional Facility. His employment was terminated. Williams appealed his termination by filing a merit complaint. On October 3, 2008, an Administrative Law Judge for the SEAC issued a non-final order dismissing Williams's complaint. This non-final order was affirmed in a November 18, 2008 final order. On December 15, 2008, Williams petitioned for judicial review of the decision in Marion Superior Court. Following a motion by the SEAC to dismiss, on January 12, 2009, the trial court dismissed Williams's petition on the grounds that the SEAC was not a proper party to the action.

On January 13, 2009, Williams mailed to the trial court a motion for extension of time within which to file the agency record. The CCS indicates that the trial court received Williams's motion on January 15, 2009, and denied it on January 22, 2009.

On February 11, 2009, Williams filed a notice of appeal of the trial court's January 12, 2009 dismissal. On July 16, 2009, this court reversed the trial court's dismissal and remanded the matter to the trial court with instructions to order joinder of a certain party

and consider the merits of Williams's petition. *See Williams v. State Employees' Appeals Comm'n*, No. 49A02-0902-CV-140 (Ind. Ct. App. July 16, 2009).

On August 17, 2010, the SEAC moved to dismiss Williams's petition on the grounds that Williams had failed to file an agency record pursuant to Indiana Code section 4-21.5-5-13 (2004). On October 1, 2010, the trial court granted the SEAC's motion on the grounds that, *inter alia*, Williams had failed to file a timely agency record. This appeal follows.

### **DISCUSSION AND DECISION**

We review de novo a court's ruling on motions to dismiss for failure to timely file necessary agency records where the court ruled on a paper record. *Indiana FSSA v. Meyer*, 927 N.E.2d 367, 370 (Ind. 2010). The Indiana Administrative Orders and Procedures Act (AOPA) provides the exclusive means for judicial review of a final agency action. *Id.* (citing Ind. Code § 4-21.5-5-1). Section 5 requires that the aggrieved petitioner file a petition with the trial court within thirty days of service of the final agency action. *Id.* (citing Ind. Code § 4-21.5-5-5). Section 13 addresses the subsequent requirement to file the record:

(a) Within thirty (30) days after the filing of the petition, or within further time allowed by the trial court or by other law, the petitioner shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action ...

(b) ... Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.

Ind. Code § 4-21.5-5-13.

The purpose of AOPA section 13 is to ensure that the review of agency action proceeds in an efficient and speedy manner, and that the reviewing trial court has access to the record before rendering its decision. *Id.* The filing requirement also ensures that “no relevant evidence or materials are hidden, and no ‘new’ or ‘secret’ evidence is introduced to either contradict or support an agency decision.” *Id.* (internal quotation omitted).

The statute places on the petitioner the responsibility to file the agency record timely. *Id.* Although the statute allows a petitioner to seek extensions of time from the trial court, and requires that extensions be granted if the petitioner demonstrates “good cause” for a delay in filing the record, the statute does not excuse untimely filing or allow *nunc pro tunc* extensions. *Id.* (citing Ind. Code § 4-21.5-5-13(b)).

It is well settled that a reviewing court may grant a request for an extension under section 4-21.5-5-13 of AOPA only if the request is made during the initial thirty days following the filing of the petition for review or within any previously granted extension.

*Id.* (quoting *Wayne Cnty Prop. Tax Assessment Bd. of Appeals v. United Ancient Order of Druids-Grove #29*, 847 N.E.2d 924, 927-28 (Ind. 2006) (internal citations omitted)).

Williams argues that the trial court erred in dismissing his petition for judicial review. Williams does not dispute that the agency record was not transmitted within thirty days of his petition but argues that he timely filed his request for an extension of time. Regardless of whether Williams timely filed his request for an extension of time, the trial court did not grant Williams his requested extension. Pursuant to the plain language of Indiana Code section 4-21.5-5-13(a), a petitioner’s time to transmit an agency record is tolled by a request for an extension of time only if that request is

granted. *See Ind. State Bd. of Educ. v. Brownsburg Comm. Sch. Corp.*, 813 N.E.2d 330, 333 (Ind. Ct. App. 2004) (“If the petitioner fails to either file the agency record within thirty days of filing their petition, or request *and receive* an extension of time within that thirty-day period, the trial court must dismiss the petition . . . .” (Emphasis supplied)).

Admittedly, the trial court’s January 22, 2009 denial of Williams’s petition for an extension of time is somewhat questionable given that—within the thirty-day period following Williams’s petition for review—the court had already dismissed Williams’s petition on what were subsequently determined to be erroneous grounds. Even assuming that this court’s remanding Williams’s case to the trial court “reset the clock” for purposes of transmitting the agency record, Williams did not transmit the record within thirty days of the remand, nor did he re-petition the court—and receive from the court—an extension of time to do so. It is the petitioner’s burden to file or seek an extension within the statutory period or any extension. *See Meyer*, 927 N.E.2d at 371. Williams failed to satisfy his burden.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.