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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.**

APPELLANT PRO SE:

CHARLIE HERBST
Bunker Hill, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CHARLIE HERBST,)	
)	
Appellant-Plaintiff,)	
)	
vs.)	No. 52A02-0610-CV-879
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable Rosemary Burke, Judge
Cause No. 52C01-0601-CT-43

July 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Charlie Herbst appeals the trial court's dismissal of his "Notice of Claim" seeking judicial review of a prison disciplinary action. We affirm.

Herbst is an inmate at Miami Correctional Facility. In 2002, Herbst was the subject of a prison disciplinary proceeding for allegedly assaulting a staff member. The prison's conduct adjustment board held a hearing in October 2002, and found Herbst guilty of physically restraining a guard. He was sanctioned with the loss of 180 days of earned credit time. Herbst appealed the decision to the warden, alleging that a fellow inmate's testimony was not heard by the board. The warden set aside the board's decision and ordered a rehearing. At the rehearing in November 2002, Herbst declined to offer the fellow inmate's testimony, and the board found him guilty of battery on a guard, again sanctioning him with the loss of 180 days of earned credit time. Herbst again appealed to the warden, but this appeal was denied. Herbst then filed a Petition for Writ of Habeas Corpus in the United States District Court for the Northern District of Indiana. The petition was denied for failing to show a violation of due process. Herbst then appealed that decision to the Seventh Circuit Court of Appeals, which affirmed the District Court's decision.

Herbst then filed a petition in Miami Circuit Court alleging violations of state law.¹

The trial court issued an order, which states in relevant part:

Insofar as Mr. Herbst raises a tort claim, he may not proceed as his own actions that contributed to the injuries would preclude a finding of proximate cause. In addition, his claim is barred by the Statute of Limitations. As to his complaints regarding disciplinary proceedings, this court does not have subject matter jurisdiction pursuant to Blanck v. Dept. of Corrections, 829 N.E.2d 505 (Ind. 2005).

¹ Herbst has not included a copy of this petition in his Appendix. We are therefore unable to review for ourselves its specific allegations, relying instead on the averments in his brief and the statements in the trial court's order.

Finally, as to his complaints regarding the arbitrary disciplinary procedures, the court finds his complaint to be frivolous. The matter has been previously adjudicated in federal court and to pursue this litigation in the state court is a waste of judicial resources.

No other claims remain to be adjudicated. The court now orders this cause dismissed

Appellant's Appendix at 16.

Herbst appeals the trial court's order, alleging, to the best of our ability to discern his arguments, that the trial court erred in finding it had no subject matter jurisdiction and in finding that the statute of limitations had expired.

Herbst contends that "an institution should not be allowed to deprive an inmate of earned credit time . . . without following state laws and procedures, and if a state prison does not adhere to those same rules it has established to deprive earned credit time, an inmate should be allowed to file a claim . . . for review of state law violations once that inmate has exhausted all available [Department of Correction] remedies" Brief of Appellant at 5. On this basis, he attempts to distinguish his claims from those in Blanck and asserts that the trial court had subject matter jurisdiction over his claims. Although the specific statutes upon which Herbst bases his claims are different than those addressed in Blanck, the principles are the same: the statutes may impose certain duties on the DOC and confer substantive rights on inmates, but they include no provision that specifically states nor from which we can infer that inmates have a right to enforce those rights in court. See Blanck, 829 N.E.2d at 509. As case law in our state has held going back to at least 1980, "[n]either Indiana statutes nor common law rules establish [an inmate's] right to judicial review of a prison disciplinary action." Hasty v. Broglin, 531 N.E.2d 200, 201 (Ind. 1988) (citing Riner v. Raines, 274 Ind.

113, 409 N.E.2d 575 (Ind. 1980)). Blanck also addressed the impact of Article I, section 12 of the Indiana Constitution (the “Open Courts provision”), holding that the “Open Courts Clause itself . . . does not confer subject matter jurisdiction, at least not over claims challenging judicial review of prison disciplinary decisions.” 829 N.E.2d at 511. The trial court properly dismissed Herbst’s petition for lack of subject matter jurisdiction.

As for the statute of limitations, Herbst makes a cursory argument that the ten-year general statute of limitations found at Indiana Code section 34-11-1-2 should apply. It appears, based upon the limited information available to us, that Herbst was asserting a tort claim against the prison guards for injuries he sustained in the altercation that prompted this litigation. Thus, when the trial court referenced the statute of limitations, it was referring to the two-year statute of limitations for tort actions and the trial court properly found that the statute of limitations had expired. See Ind. Code § 34-11-2-4.

Affirmed.

SULLIVAN, J., and VAIDIK, J., concur.