

Pursuant to Ind. Appellate Rule 65(D), 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.

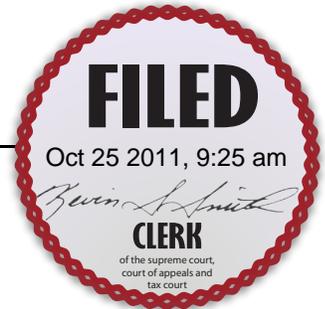
APPELLANT PRO SE:

AARON D. KELLEY, JR.
Greencastle, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERELLS
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

AARON D. KELLEY, JR.,)

Appellant,)

vs.)

No. 45A03-1007-PC-398

STATE OF INDIANA,)

Appellee.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0103-CF-63

October 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Aaron D. Kelley, Jr., pro se, appeals the post-conviction court's denial of his motion for educational credit time.¹

We dismiss this appeal.

ISSUE

Whether this appeal should be dismissed because Kelley, who has already filed one petition for post-conviction relief, failed to demonstrate that this case is not an unauthorized successive petition for post-conviction relief.

FACTS

In 2001, Kelley pled guilty to robbery as a class C felony, and the trial court sentenced him to seven years in the Department of Correction. In September 2004, Kelley "offered" a pro se post-conviction petition to the trial court, but the trial court "refused" to file it and sent him a copy of a standard post-conviction form. (App. 4). Thereafter, Kelley filed a post-conviction petition, and on October 4, 2004, that case was assigned a post-conviction cause number, 45G01-0410-PC-8 ("PC-8 case"). Kelley's Appendix does not contain any information about the course or outcome of his PC-8 case, but our court's docket indicates that Kelley commenced an appeal from that post-conviction case and that the appeal was later dismissed due to his failure to timely file an Appellant's Brief. (*See* Clerk's Docket, 45A05-0509-PC-558).

On June 10, 2010, Kelley filed a verified petition for educational credit and a memorandum in support of the petition.² On June 11, 2010, the post-conviction court

¹ Kelley did not timely file a Reply Brief but has filed a motion seeking permission to file a belated Reply Brief. By separate order, we grant his motion to file a belated Reply Brief.

denied Kelley’s petition and indicated that “[t]he determination of whether a defendant is entitled to credit time under IC 35-50-6-3.3, rests with the Department of Correction not the Court. *Sander v. Sander*, [sic] 816 N.E.2d 75 (Ind. Ct. App. 2004).” (App. 8). Kelley then filed a motion to correct error, which the trial court denied.

DECISION

Kelley—asserting that he has already been denied his application of credit time by the Department of Correction and has exhausted all administrative remedies—argues that the post-conviction court erred by determining that it did not have jurisdiction to review his petition for educational credit time. The State argues that this Court should dismiss Kelley’s appeal because his educational credit time petition amounted to a successive petition for post-conviction relief and that Kelley failed to carry his burden of showing that he complied with Indiana Post-Conviction Rule 1(12), the rule governing successive post-conviction petitions.

In *Young v. State*, 888 N.E.2d 1255, 1256 (Ind. 2008), our Indiana Supreme Court explained that “post-conviction proceedings are the appropriate procedure for considering properly presented claims for educational credit time.” (Emphasis added). Our supreme court explained that:

[i]n order to present a claim properly, however, a petitioner must follow the Indiana Rules of Procedure for Post-Conviction Remedies. If a petitioner has never sought post-conviction relief in the past, that petitioner must follow the procedures outlined in P-C.R. 1. If the petition is not the first for post-conviction relief a petitioner has filed, that petitioner must follow the procedure outlined in P-C.R. 1(12) for filing successive petitions.

² In his petition and memorandum, Kelley alleged that the Department of Correction had erred by refusing to grant him credit time, pursuant to Indiana Code section 35-50-6-3.3, for completion of a GED program.

Young, 888 N.E.2d at 1256-57 (emphasis added). Under Post-Conviction Rule 1(12), a petitioner must file, with the Clerk of the Indiana Supreme Court and Indiana Court of Appeals, a petition seeking permission to file a successive post-conviction petition as well as a proposed successive petition for post-conviction relief. If the petitioner establishes a “reasonable possibility that [he] is entitled to post-conviction relief,” this court will authorize the filing of the successive post-conviction petition, which is then filed in the court where the petitioner’s first post-conviction relief petition was adjudicated. *See* P-C.R. 1(12)(b).

In *Young*, our supreme court affirmed the dismissal of the petitioner’s appeal because he had already filed a petition for post-conviction relief and had failed to demonstrate that his case was not an unauthorized successive post-conviction petition. *Young*, 888 N.E.2d at 1257. The supreme court admonished the petitioner regarding the proper procedure for presenting a petition for educational credit time as follows:

If [the petitioner] 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) Here, for example, [the petitioner] must show in the first place what the relevant DOC administrative grievance procedures are, and then that he has exhausted them at all levels. [The petitioner] 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).

Id.

Here, as in *Young*, Kelley failed to properly present his claim for educational credit time. The record reveals that Kelley has already filed one petition for post-

conviction relief, and he has failed to show that this case is not an unauthorized successive petition for post-conviction relief. Accordingly, we must dismiss this appeal.³

See Young, 888 N.E.2d at 1257.

Dismissed.⁴

FRIEDLANDER, J., and VAIDIK, J., concur.

³ In doing so, we direct Kelley's attention to the Indiana Supreme Court's admonishment regarding the requirements and proper procedure for presenting a petition for educational credit time as a successive post-conviction petition. *See Young*, 888 N.E.2d at 1257. We also direct Kelley's attention to Indiana Post-Conviction Rule 1(12), which includes the forms that a petitioner must use and the requirements that a petitioner must follow when filing, with the Clerk of this court, a petition seeking permission to file a successive post-conviction petition.

⁴ The State also argued that Kelley failed to show what the relevant Department of Correction grievance procedures were and that he had exhausted all of his administrative remedies and failed to present evidence of his diploma and the credentials of the school. In response to the State's argument, Kelley tendered a supplemental Appendix when he tendered his untimely Reply Brief. This court returned the supplemental Appendix because Kelley had failed to seek permission to file a supplemental Appendix. Because we conclude that Kelley has failed to show that this case is not an unauthorized successive petition for post-conviction relief, we need not determine whether he has met his burden of showing that he exhausted all of his administrative remedies as this is something that he will need to establish if he decides to file a petition for permission to file a successive petition for post-conviction relief.