APPELLANT PRO SE:

REGINALD SANDERS
Pendleton, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

REGINALD SANDERS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 20A05-0911-CR-661
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0307-FA-143

April 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Reginald Sanders appeals the denial of his "Motion for Order Directing Indiana Department of Correction to Award Credit for Days Served While Being Held on Parole Violation Warrant." (Appellant's App. at 15.) We reverse the denial of his petition and order it be dismissed without prejudice.

FACTS AND PROCEDURAL HISTORY

On May 11, 2005, Sanders pled guilty to Class C felony possession of cocaine, and on June 2, 2005, he was sentenced to six years in the Department of Correction ("DOC"). He was placed on parole on February 19, 2006.

According to a document titled "Notice/Disposition by Parole Board," Sanders was arrested on August 9, 2006, because he committed new offenses while on parole. (*Id*. at 24-25.) Sanders was convicted of two counts of dealing in cocaine and two counts of conspiracy to commit dealing in cocaine. On March 8, 2007, he was sentenced to forty years, with credit for 225 days served. On December 3, 2008, the Parole Board formally revoked Sanders' parole based on the new convictions.

On September 21, 2009, Sanders filed his motion with the trial court seeking credit for the time he was incarcerated pending disposition of the new offenses and the parole violation. Sanders alleged he had notified the "Parole Department" that he had not received all the credit he earned, but he did not receive a response. (*Id*. at 28.) He further alleged the DOC has deemed credit time calculations to be non-grievable, and he had therefore exhausted his administrative remedies.[1] The trial court denied the motion the same day it was

[1] Sanders supported his allegation that he exhausted administrative remedies by attaching a copy of his

filed, stating the relief sought by Sanders was not in the court's purview.

DISCUSSION AND DECISION

Sanders argues the trial court erred by denying his motion, because it may be treated as a petition for post-conviction relief. In *Young v. State*, 888 N.E.2d 1255, 1256-57 (Ind. 2008), our Supreme Court recognized that a petition for post-conviction relief is the proper vehicle for raising a credit time claim after administrative remedies have been exhausted. The Court cited with approval our opinion in *McGee v. State*, 790 N.E.2d 1067, 1069 (Ind. Ct. App. 2003), *trans. denied*, in which we held McGee's "motion [for credit time], though not specifically designated a petition for post-conviction relief, was nonetheless properly filed in the court of his conviction and the trial court had jurisdiction to entertain his motion and review the DOC determination." Thus, Sanders argues his motion should be reviewed as a petition for post-conviction relief even though it was not designated as such.

The State argues Sanders' motion does not comply with the post-conviction rules. For example, it is not verified and does not substantially comply with the standard form set out in the rules. *See* Ind. Post-Conviction Rule 1(3).

"Request for Interview" addressed to the "Parole Department," (Appellant's App. at 28), and a page from a document titled "Operational Procedures Offender Grievance Process Policy #00-02-301," which lists "[c]lassification actions or decisions" under the heading "Non-Grievable Items." (*Id*. at 22.) At this point, Sanders has not had a hearing, and the State has not presented any evidence to contradict his allegation that he exhausted remedies. We note, however, if Sanders continues to pursue this claim, he will have the burden of demonstrating he followed the proper administrative procedure. *See Young v. State*, 888 N.E.2d 1255, 1257 (Ind. 2008) (person petitioning for credit time via Ind. Post-Conviction Rule 1 must "show in the first place what the relevant DOC administrative grievance procedures are, and then that he has exhausted them at all levels"). We note that while credit time apparently is not addressed under the grievance procedure established by Policy #00-02-301, previous opinions suggest there is an administrative procedure for addressing credit time claims. *See, e.g.*, *Stevens v. State*, 895 N.E.2d 418, 418-19 (Ind. Ct. App. 2008) (noting that when Stevens filed a grievance seeking educational credit time, DOC returned the grievance with a note that classification or disciplinary actions "are to be appealed through their own process and not through the grievance process," and

Sanders notes we allowed McGee's claim to proceed as a petition for post-conviction relief without considering whether his motion complied with the post-conviction rules. At the time *McGee* was decided, the proper method for raising a claim for credit time had not been determined. The State argued McGee's claim should be brought as a *habeas corpus* petition and filed in the county where McGee was incarcerated. *See Partlow v. Superintendent, Miami Correctional Facility*, 756 N.E.2d 978, 981 (Ind. Ct. App. 2001) ("Jurisdiction over writs of habeas corpus is traditionally with the court in the county where the petitioner is incarcerated. . . , whereas petitions for post-conviction relief must be filed in the conviction court . . . ."), *superseded by statute on other grounds as stated in Paul v. State*, 888 N.E.2d 818 (Ind. Ct. App. 2008). We disagreed, and held jurisdiction was in the court of conviction. *McGee*, 790 N.E.2d at 1069. Thus, our statement that McGee's motion was "properly filed in the court of his conviction" was an observation that McGee filed his motion in the correct court. The State did not question whether McGee's motion complied with the post-conviction rules, and we did not address that issue.

We agree that Sanders' petition was inadequate. The verification requirement is not a mere technicality. "The essential purpose of a verification is that the statements be made under penalty for perjury." *Austin v. Sanders*, 492 N.E.2d 8, 9 (Ind. 1986). Neither did Sanders comply with the requirement that the petition substantially comply with the form set out in the rules. We therefore conclude it should be dismissed without prejudice.[2] *See* Ind.

---

thereafter, Stevens filed a "Classification Appeal").

[2] It is not apparent that Sanders was denied credit time. According to the document titled "Notice/Disposition by Parole Board," Sanders was arrested on August 9, 2006, and was sentenced on the new offenses on March

P-C.R. 1(4)(c) ("The petitioner shall be given leave to amend the petition as a matter for right no later than [60] days prior to the date the petition has been set for trial.").

Affirmed.

KIRSCH, J., and DARDEN, J., concur.

8, 2007. (Appellant's App. at 25.) His new sentence gave him credit for 225 days served, (*id.*), which is slightly longer than the period of time from arrest to sentencing. It is not apparent what else could be the source of the 225 days of credit if not the time he was incarcerated pending disposition of the new charges and parole violation.