



## **Case Summary**

Charles Watkins appeals the post-conviction court's denial of his request for additional credit time. We affirm.

### **Issue**

Watkins presents one issue for review, which we restate as whether the post-conviction court properly denied his motion for additional credit time based on his completion of substance abuse programs.

### **Facts**

Watkins is currently incarcerated at the Miami Correctional Facility in Bunker Hill serving a twenty-eight year sentence for Class B felony dealing in a controlled substance, Class B felony conspiracy to commit dealing in a controlled substance, and Class D felony maintaining a common nuisance, with a habitual offender enhancement. He was sentenced on August 14, 2001. Watkins completed a substance abuse program on August 15, 2001, while housed in the Tippecanoe County Jail. While at the Otter Creek Correctional Center in Kentucky he completed another substance abuse program entitled "Life Without a Crutch" on May 29, 2002.

On September 1, 2006, Watkins filed a verified petition for credit time with the Tippecanoe Superior Court, which was denied on September 11, 2006. He appealed the decision, arguing that the post-conviction court failed to award him credit time pursuant to Indiana Code Section 35-50-6-3.3 for the two substance abuse courses. Our court found that Watkins failed to exhaust his administrative remedies through the Department

of Correction (“DOC”) and dismissed the appeal. See Watkins v. State, 869 N.E.2d 497, 500 (Ind. Ct. App. 2007). We also held that “it is the DOC which administers the sentence and consequently the DOC which maintains the responsibility to deny or restore credit time.” Id.

While the above appeal was pending, Watkins began filing grievances with the DOC requesting credit time for both programs. A DOC official responded and informed Watkins that “Life Without a Crutch” was not an approved treatment program of the DOC. An official from the Tippecanoe County Sheriff’s Office responded and explained that it does not handle credit time issues for DOC inmates.

Watkins filed additional grievances with DOC and sent letters to DOC officials requesting credit time for the programs. Amy Clark of the DOC responded twice, on August 28, 2007, and October 2, 2007, that the substance abuse program Watkins completed in the Tippecanoe County Jail “is not recognized by the DOC.” App. pp. 24, 26. DOC officials also suggested other approved programs that Watkins could enroll in. On October 12, 2007, Watkins filed a second petition for earned time credit with the Tippecanoe Superior Court, which was denied. Watkins filed a notice of appeal on October 26, 2007, which was denied. He filed a second notice of appeal on November 15, 2007, and pursuant to this court’s order, he filed a motion to show cause. This court found Watkins had shown cause on February 28, 2008, and the appeal proceeded.

### **Analysis**

Watkins requests credit time for either of the substance abuse treatment programs he completed. He contends the Tippecanoe Superior Court erred in failing to award him

six months of credit time. Indiana Code Section 35-50-6-3.3 provides that a person may earn such credit time while confined in the DOC if he or she is in credit class I, demonstrates a pattern consistent with rehabilitation, and successfully completes requirements to obtain at least one of the following:

- (A) A certificate of completion in a career and technical education program approved by the department of correction.
- (B) A certificate of completion of a substance abuse program approved by the department of correction.
- (C) A certificate of completion of a literacy and basic life skills program approved by the department of correction.

Ind. Code § 35-50-6-3.3(b)(3). The statute also provides that the DOC may establish the admission criteria and other requirements for the programs. See I.C. § 35-50-6-3.3(c).

“The DOC maintains the responsibility to deny or restore credit time.” Samuels v. State, 849 N.E.2d 689, 692 (Ind. Ct. App. 2006), trans. denied. This court dismissed Watkins first appeal after concluding that he had not exhausted his administrative remedies and the proper course of action was for him to seek credit time through the DOC. Even before our decision was handed down, however, Watkins initiated grievance procedures with the DOC to obtain credit time for both substance abuse programs. Based on the record before us, it seems Watkins exhausted his administrative remedies and the DOC reached final decisions denying credit time for both programs on the grounds that the programs were not DOC approved.

The State contends that Watkins’s most recent petition for credit time with the court of his conviction could be treated like a motion to correct an erroneous sentence.

We conclude it is more properly treated as a petition for post-conviction relief. “[A] motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.” Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004). Watkins’s petition has little to do with the sentencing judgment itself, and instead involves proceedings after trial—his post-conviction completion of substance abuse programs, his requests to the DOC for credit, and denials of those requests.

We treat Watkins’s petition for credit time as a post-conviction relief petition under Indiana Post Conviction Rule 1, as we have treated similar petitions. See McGee v. State, 790 N.E.2d 1067, 1069 (Ind. Ct. App. 2003) (reasoning that it is not inconsistent with Indiana Post Conviction Rule 1 to allow post conviction review of credit time determinations when immediate release is not the relief sought), trans. denied. In McGee, we held that even though McGee’s motion was not specifically designated as a post-conviction relief petition, it was filed in the court of his conviction and that court had jurisdiction to entertain the motion and review DOC’s determination regarding the credit time. Id. See also Members v. State, 851 N.E.2d 979, 982 (Ind. Ct. App. 2006) (“[T]his court has, on occasion, permitted claims for educational time credit to proceed in accordance with post-conviction procedures.”)

A petitioner who has been denied post-conviction relief appeals from a negative judgment and must demonstrate on appeal that the evidence unerringly and unmistakably

leads to a conclusion opposite that reached by the court. Ind. Post-Conviction Rule 1; Ivy v. State, 861 N.E.2d 1242, 1244 (Ind. Ct. App. 2007), trans. denied. Following Watkins's grievances and letters, Sue Lester of the DOC informed Watkins that the "Life Without a Crutch" program was not an approved program for Indiana DOC offenders. The credit time statute gives the DOC the authority to set requirements for these types of programs. See I.C. § 35-50-6-3.3(c). Amy Clark of the DOC informed Watkins that the Tippecanoe County program also was "not recognized by the DOC" on August 28, 2007, and again on October 2, 2007. App. pp. 24, 26. The credit time statute also specifically notes that credit will be given for "completion of a substance abuse program approved by the department of correction." I.C. § 35-50-6-3.3(b)(3)(B) (emphasis added). Because neither of these programs was approved by the DOC for credit time, the DOC's denials of Watkins's grievances were proper. Nothing in the evidence suggests that an opposite conclusion should have been reached by the post-conviction court.

### **Conclusion**

The post-conviction court properly denied Watkins's petition for additional credit time. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.