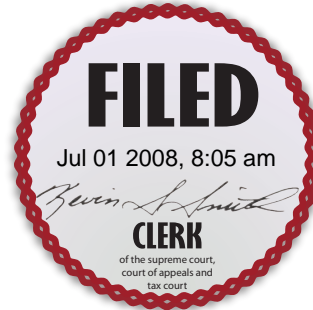


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES L. HOLLIDAY,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 34A05-0803-CR-117

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Judge
Cause No. 34D01-0602-FA-00088

JULY 1, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

James Holliday appeals from the denial of his motion to the court for additional earned credit time. The state argues that Holliday has failed to exhaust his administrative remedies, and therefore the court is without subject matter jurisdiction.

In February, 2006, Holliday was charged with dealing in cocaine, a Class A felony; possession of cocaine, as a Class B felony; and, operating a vehicle as an habitual traffic offender. In June, 2006, the Howard County Sheriff's Department filed a letter advising the court that Holliday had completed the Almond Tree Drug and Alcohol Recovery Program. In January, 2007, Holliday pled guilty to the possession and operating charges in exchange for dismissal of the dealing charge.

In November, 2007, Holliday wrote to the Commissioner of the Department of Corrections (IDOC) requesting additional earned credit time (apparently referred to within the department as "time cuts") for programs he had completed while in jail prior to his guilty plea.

Some confusion followed.¹ First, the acting commissioner of IDOC advised the superintendent of the New Castle Correctional Facility (NCCF) where Holliday was held that the request had to be submitted on an IDOC approved form and that the credit must be requested through the proper channel at the facility level. The letter instructed NCCF to "ensure the offender(s) is supplied with the appropriate form if he wishes to pursue the matter."

¹ This may well have occurred because the programs Holliday sought credit for were all taken while he was a pretrial inmate in the Howard County jail.

Holliday requested the approved form. He received a letter from the assistant superintendent of the NCCF, which stated that Holliday's confusion was understandable, but only facility staff could certify completion of approved programs and submit the necessary form(s). This was accompanied by a memo which stated that if an inmate submitted a document alleging completion of a program directly to any division of IDOC, that might result in a Report of Conduct. Another memo was included, listing approved programs and stating that programs not on the list were not approved.

Shortly thereafter, Holliday filed his motion with the trial court seeking additional credit time.

We begin with the observation that the legislative intent behind the educational credit time statute is to enhance rehabilitation by providing offenders with the incentive to further their education while incarcerated. *McGee v. State*, 790 N.E.2d 1067, 1070 (Ind. Ct. App. 2003) *transfer denied*. Thus, the IDOC should facilitate rather than hinder the purposes of the statute.

Secondly, the statute under which Holliday is seeking assistance is Ind. Code § 35-50-6-3.3(b) which provides a person may earn credit time while incarcerated if he 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 of 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; or, (C) a certificate of completion of a literacy and basic life skills program approved by the department of correction.

Finally, as the court pointed out in *Members v. State*, 851 N.E.2d 979, 983 (Ind. Ct. App. 2006) modifications of credit time are the responsibility of IDOC. However, the legislature has determined that offender grievances arising out of administrative acts or omissions that affect the offender are to be resolved through a departmental grievance procedure that conforms to the requirements of I.C. 11-11-1-1 *et seq.*

In other words, the trial court lacked subject matter jurisdiction of Holliday's claim because Holliday has failed to exhaust his administrative remedies by filing and pursuing to a conclusion a grievance on the failure to grant him additional credit time for the programs he has completed.

At the same time, it appears from the record in this case that IDOC has yet to address Holliday's request for additional credit time in a manner that would permit the initiation of a grievance whereby he might secure review of his claim.

It should proceed to do so at this time so that Holliday may in due course secure administrative review of his entitlement to any additional credit time pursuant to I.C. 35-50-6-3.3(b).

Appeal dismissed for lack of subject matter jurisdiction.

MAY, J., and BARNES, J., concur.