



Richard Huffman, *pro se*, appeals the denial of his petition for post-conviction relief related to an educational credit against his release date. Huffman raises two issues, which we revise and restate as whether the court erred in denying Huffman's petition. We affirm.

The relevant facts follow. Huffman pled guilty to murder and conspiracy to commit robbery for his part in the attack of a man with a tire iron in June 1984 and was sentenced to sixty years. See Huffman v. State, 717 N.E.2d 571, 573 (Ind. 1999). Huffman is incarcerated in the Indiana Department of Correction at the Putnamville Correctional Facility.

In August 2006 and while incarcerated, Huffman was awarded a high school diploma from Continental Academy ("Continental"), a correspondence program in Miramar, Florida. Huffman requested educational credit time for obtaining the diploma, and his request was denied. Huffman brought a formal grievance alleging that he should have been granted the credit requested, which was denied by the DOC on the basis that Continental was not accredited or recognized by the Florida Department of Education and Continental's program did not meet the criteria of a high school diploma set by the Indiana Department of Education. Huffman filed a grievance appeal, which was denied.

On April 16, 2010, Huffman filed a Petition for Additional Earned Credit Time, a memorandum in support of the petition, and thirteen exhibits. In the petition and memorandum, Huffman alleged that he obtained a high school diploma through Continental via a correspondence course and that he was entitled to credit time. The exhibits included the following: two letters by Huffman regarding his request for credit

time; Huffman's completed grievance form; a grievance response report; Huffman's completed grievance appeal form; a grievance response report including the explanation for denying Huffman's appeal; a declaration of the Education Director for the DOC; a document indicating the accreditation of Continental; the high school diploma awarded to Huffman by Continental; the Transcript Key of Continental; and Huffman's Permanent Academic Record.

On June 4, 2010, the State filed a motion for summary disposition, a memorandum in support of the motion, and an affidavit of the Education Program Coordinator for the DOC. In its motion and memorandum, the State argued that "[a] diploma from the [Continental] does not qualify for credit time pursuant to Indiana Code section 35-50-6-3.3." Appellant's Appendix at 79. The State further argued that "even assuming that the diploma did qualify for credit, Huffman is still not entitled to the relief he is requesting" and that Huffman has not alleged or proven that "he is in Credit Class I or has demonstrated a pattern of behavior consistent with rehabilitation" as required by Ind. Code § 35-50-6-3.3. *Id.* On July 6, 2010, Huffman filed a rebuttal to the State's request for summary judgment.

On July 16, 2010, the court issued an order granting summary disposition in favor of the State. The court's order stated in part:

3. Pursuant to McGee v. State, 790 N.E.2d 1067 (Ind. Ct. App. 2003), trans. denied, and Ind. Code § 35-50-6-3.3, the high school from which the diploma is received does not have to be an Indiana high school but must have standards as high as those in Indiana in order to authorize an award of credit time for a diploma.

4. [Continental] does not meet Indiana's standards because it does not require proctoring of its exams during courses.

5. Indiana requires a graduation qualifying examination (GQE) also known as ISTEP+ (Indiana Statewide Testing for Educational Progress). See Ind. Code § 20-10.1-16-1.5.<sup>[1]</sup>

6. [Continental] does not include a final examination equivalent to Indiana's ISTEP+ test prior to awarding high school diplomas.

7. Huffman has failed to provide any documentation to show that [Continental] is accredited by an appropriate State Board of Education, or that it would meet Indiana's standards.

8. Huffman is not entitled to credit time for his high school diploma from [Continental].

Id. at 73-74.

The issue is whether the court erred in denying Huffman's petition for post-conviction relief. Under the rules of post-conviction relief, the petitioner must establish his grounds for relief by a preponderance of the evidence. Ind. Post Conviction Rule 1, § 5. A petitioner who has been denied post-conviction relief appeals from a negative judgment, and must convince the appellate court that the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. McCary v. State, 761 N.E.2d 389, 391 (Ind. 2002). In other words, we "will disturb a post-conviction court's decision as being contrary to law only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion." Miller v. State, 702 N.E.2d 1053, 1058 (Ind.

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<sup>1</sup> This statutory section has been repealed and replaced by Ind. Code § 20-18-2-6. See Pub. L. No. 1-2005, § 240 (eff. July 1, 2005)). Ind. Code § 20-18-2-6 provides: "'Graduation examination' means the test designated by the board under the ISTEP program."

1998), reh'g denied, cert. denied, 528 U.S. 1083, 120 S. Ct. 806 (2000) (citations omitted).

Huffman argues that he “has provided sufficient documentation to establish that [Continental’s] program is similar to or exceeds Indiana’s high school requirements.” Appellant’s Brief at 5. Huffman argues that Continental is “fully accredited by Southern Association of Colleges and Schools (SACS),” that “[w]hen the DOC did offer a high school diploma, it was accredited by the North Central Association of Colleges and Schools (NACS),” and that “[t]his is the same accrediting agency as [Continental] only its northern geographic office . . . .” Id. at 4. Huffman argues that he included in his petition “a Permanent Academic Record showing the extensive course work, following proctored exams, required for completion of Continental’s high school diploma program.” Id. at 5. Huffman argues that the post-conviction court’s “claim in its final order claiming [Continental] does not offer proctored exams is false” and that “[w]hen the coursework arrived at the Putnamville Correctional Facility it was sealed for the Staff Proctor to administer the test to Appellant.” Id.

The State argues that Huffman “failed to present any evidence that the standards of instruction by [Continental] are substantially similar to those in Indiana.” Appellee’s Brief at 5. The State argues that “the fact that [Continental] may have accreditation from organizations does not prove that it meets the standards for schools in Indiana.” Id. The State argues that “Indiana requires a graduation qualifying examination.” Id. at 6. The State further cites to Ind. Code § 35-50-6-3.3 and argues that, even assuming the diploma qualified, Huffman has not established “that he is in Credit Class I and has demonstrated

a pattern of behavior consistent with rehabilitation.” Id. In his reply brief, Huffman argues that he established that Continental “required proctored exams.” Appellant’s Reply Brief at 2.

Indiana Code § 35-50-6-3.3 provides in pertinent part:

- (a) . . . [A] person earns credit time if the person:
  - (1) is in credit Class I;
  - (2) has demonstrated a pattern consistent with rehabilitation; and
  - (3) successfully completes requirements to obtain one of the following:

\* \* \* \* \*

- (B) A high school diploma, if the person has not previously obtained a general educational development (GED) diploma.

\* \* \* \* \*

- (d) The amount of credit time a person may earn under this section is the following:

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- (2) One (1) year for graduation from high school.

In McGee v. State, we held that “the statute does not preclude a person from earning credit time for a diploma granted by an out-of-state school as long as the standards of instruction for earning that diploma are substantially similar to those in Indiana.” 790 N.E.2d 1067, 1070 (Ind. Ct. App. 2003), trans. denied. Thus, in order to receive educational credit time for receiving a high school diploma from an out-of-state

school, Huffman was required to demonstrate that the standards of instruction at Continental were substantially similar to those in Indiana.

Here, the post-conviction court found that the standards of instruction for earning a diploma from Continental were not substantially similar to Indiana standards. The court specifically found that Continental did not meet Indiana's standards because it did not require proctoring of its exams during courses and did not include a final examination equivalent to Indiana's ISTEP+ prior to awarding a high school diploma. Under Ind. Code § 20-32-4-1, Indiana requires that the academic standards tested in a graduation examination be met before a candidate is eligible to graduate.<sup>2</sup> Additionally, the court found that Huffman failed to provide any documentation to show that Continental was accredited by an appropriate State Board of Education or would meet Indiana's standards. We agree with the post-conviction court.

Huffman failed to show that Continental had standards of instruction for earning a high school diploma that were substantially similar to those in Indiana. Huffman did not present evidence that Continental either provided proctors for exams given or required a graduation examination equivalent to Indiana's ISTEP+ prior to awarding a high school diploma. The only evidence Huffman presented to prove that Continental's instructional standards were substantially similar to Indiana's standards was that Continental was

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<sup>2</sup> Ind. Code § 20-32-4-1(a) provides:

Except as provided in subsection (b), a student must meet:

- (1) the academic standards tested in the graduation examination; and
- (2) any additional requirements established by the governing body of the student's school corporation;

to be eligible to graduate.

accredited by SACS. Huffman did not show that SACS was a governmental organization or that Continental was accredited by the State of Florida or any governmental organization. Huffman also attached to his petition the high school diploma awarded to him by Continental, the Transcript Key of Continental (discussing among other topics course numbers, the grading key, grade point average calculation, and minimum graduation requirements), and Huffman's Permanent Academic Record (setting forth the courses completed by Huffman and the grade earned in each course). These attachments do not contain any information related to the proctoring of examinations or a graduation examination or otherwise support the argument that Continental's high school diploma program had standards of instruction substantially similar to those in Indiana.

In addition, a declaration of the Education Director for the DOC was attached to Huffman's petition, and the State filed with the post-conviction court an affidavit of the Education Program Coordinator for the DOC. Both the declaration and the affidavit indicate that a correspondence school such as Continental does not meet the standards for schools within Indiana because "the courses do not require proctoring of examinations during the course" and that "the high school program available to Indiana Department of Correction offenders provides for proctoring of all tests by the education department staff." Appellant's Appendix at 90, 112. Also, both the declaration and the affidavit stated "there is no showing that [Continental] requires a final examination equivalent to Indiana's test prior to awarding high school diplomas, as required in Indiana by the ISTEP+" and that during the administration of the ISTEP+ test to DOC offenders, "there is a qualified teacher in the room at all times." Id. at 91, 112.

In support of his argument that Continental Academy required “extensive course work, following proctored exams,” Huffman points to his “Permanent Academic Record.” See Appellant’s Brief at 5. However, the Permanent Academic Record does not address course examinations or otherwise indicate that any examinations administered as a part of Huffman’s courses were proctored in any manner. Further, Huffman does not cite to the record for his argument that “[w]hen the coursework arrived at the Putnamville Correctional Facility it was sealed for the Staff Proctor to administer the test to Appellant.” See id. at 5. In addition, while Huffman’s petition included an attachment showing that Continental was accredited by SACS, Huffman does not cite to authority or evidence presented to the post-conviction court for the argument that “the DOC did offer a high school diploma, it was accredited by the North Central Association of Colleges and Schools (NACS)” and that “[t]his is the same accrediting agency as Continental Academy only its northern geographic office.” See Appellant’s Brief at 4.

Based upon the record, we conclude that Huffman was not entitled to credit time for receiving a high school diploma as he did not establish that Continental had standards of instruction for earning a diploma that were substantially similar to those in Indiana. The court did not err in denying Huffman’s petition and granting summary disposition to the State. See Glass v. Wrigley, 899 N.E.2d 652, 654-655 (Ind. Ct. App. 2008) (holding that the appellant was not entitled to credit time for receiving a high school diploma as he did not establish that the out-of-state school which awarded the diploma had standards of instruction that were substantially similar to those in Indiana and noting that the appellant did not provide any evidence that the school either provided proctors for examinations or

required a graduation examination equivalent to Indiana's ISTEP+ prior to awarding a high school diploma and that the appellant did not show that the school was accredited by the state in which it was located or any governmental organization), trans. denied; see also Samuels v. State, 849 N.E.2d 689, 692 n.2 (Ind. Ct. App. 2006) (dismissing the appeal because the appellant had failed to exhaust available remedies with the DOC but nevertheless observing that the exhibits the appellant offered at the post-conviction hearing failed to establish that Continental Academy was an accredited institution and failed to show that Continental Academy instructed him in the areas of Indiana history, science, or history required by Indiana statute), trans. denied.

For the foregoing reasons, we affirm the denial of Huffman's petition for post-conviction relief.

Affirmed.

RILEY, J., and ROBB, J., concur.