

Andrew Dowdell (“Dowdell”) pleaded guilty in Marion Superior Court to attempted murder and Class A felony rape and was sentenced to serve concurrent terms of thirty years for each conviction. During his incarceration, Dowdell successfully completed vocational training in the field of barbering. The Department of Correction denied Dowdell’s request for education credit time, and therefore, Dowdell filed a petition for post-conviction relief. The trial court denied his petition. Dowdell appeals pro se and argues that he is entitled to credit time for his completed vocational training pursuant to Indiana Code section 35-50-6-3.3. Concluding that the trial court properly denied Dowdell’s petition for post-conviction relief, we affirm.

Facts and Procedural History

In 1994, Dowdell pleaded guilty to attempted murder and Class A felony rape. He was sentenced to serve concurrent terms of thirty years for each conviction. In 1998, Dowdell received an associate of bible study degree from Anchor Theological Seminary, which is located in Arkansas. On March 23, 1998, he received a certificate of accomplishment from the Thomas R. White School for successfully completing 1500 hours “in the field of barber/stylist.” Appellant’s App. p. 39.

In 1999, Dowdell requested additional credit time for completion of his bible studies and vocational training. On November 19, 1999, the Department of Correction denied his request. On September 20, 2005, Dowdell filed a petition for post-conviction relief alleging that he was entitled to education credit time pursuant to Indiana Code section 35-50-6-3.3. Both the State and Dowdell filed motions for summary disposition and waiver of hearing.

On October 17, 2005, the trial court denied Dowdell's petition for post-conviction relief. The court concluded that 1) Anchor Theological Seminary is not an approved institution of higher learning, and 2) Dowdell completed his barbering program in March 1998, and therefore, he is not entitled to credit time under the statute. Dowdell filed a motion to reconsider, which the trial court denied. Dowdell now appeals.¹

Standard of Review

Post-conviction proceedings are not "super appeals" through which convicted persons can raise issues they failed to raise at trial or on direct appeal. McCary v. State, 761 N.E.2d 389, 391 (Ind. 2002). Rather, post-conviction proceedings afford petitioners a limited opportunity to raise issues that were unavailable or unknown at trial and on direct appeal.² Davidson v. State, 763 N.E.2d 441, 443 (Ind. 2002). The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5) (2006); Fisher v. State, 810 N.E.2d 674, 679 (Ind. 2004). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. Fisher, 810 N.E.2d at 679. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id.

¹ Dowdell only appeals the trial court's decision with regard to his request for credit time for completion of his barber vocational training.

² A petition for post-conviction relief is the proper avenue for prisoners to bring claims for credit time. See Wilson v. State, 799 N.E.2d 51, 53 n.3 (Ind. Ct. App. 2003).

The post-conviction court entered findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6) (2006). “A post-conviction court's findings and judgment will be reversed only upon a showing of clear error –‘that which leaves us with a definite and firm conviction that a mistake has been made.’” Ben-Yisrayl v. State, 729 N.E.2d 102, 106 (Ind. 2000) (quoting State v. Moore, 678 N.E.2d 1258, 1261 (Ind. 1997)). Although we accept findings of fact unless they are clearly erroneous, we give conclusions of law no deference. Fisher, 810 N.E.2d at 679.

Discussion and Decision

Dowdell claims that he is entitled to education credit time for his completed vocational training pursuant to Indiana Code section 35-50-6-3.3(b), which provides in pertinent part:

a person may earn credit time if, while confined by the department of correction, the person:

- (1) is in credit Class I;
- (2) demonstrates a pattern consistent with rehabilitation; and
- (3) successfully completes requirements to obtain at least one (1) of the following:
 - (A) A certificate of completion of a vocational education program approved by the department of correction.

Ind. Code § 35-50-6-3.3 (2004). However, under section 35-50-6-3.3(g), “[a] person does not earn credit time under subsection (b) unless the person completes at least a portion of the program requirements after June 30, 1999.”

In Miller v. Bryant, 644 N.E.2d 188, 191 (Ind. Ct. App. 1994), the petitioner argued that under section 35-50-6-3.3(a), he was entitled to additional credit time for

having earned his associates degree. However, we observed that under 35-50-6-3.3(c),³ the offender does not earn credit time unless a portion of the degree requirements was completed after June 30, 1993. Our court concluded that the petitioner completed his associates degree requirements prior to June 30, 1993, and therefore, he was not entitled to credit time for obtaining the degree. Id. at 191-92. See also Diaz v. State, 753 N.E.2d 724, 728 n.5 (Ind. Ct. App. 2001), trans. denied (“Generally, amendatory acts are given prospective effect only, unless retrospective application is expressly provided therein.”); Poling v. State, 740 N.E.2d 872, 882-83 (Ind. Ct. App. 2000) (“Because the educational degrees that Poling obtained at the time of his first petition for post-conviction relief was denied were earned before July 1, 1993, the post-conviction court could not have used [Indiana Code section 35-50-6-3.3] to reduce Poling’s sentence.”), overruled on other grounds by Graves v. State, 823 N.E.2d 1193 (Ind. 2005).

It is undisputed that Dowdell completed his vocational training well before June 30, 1999. Therefore, under the plain language of Indiana Code section 35-50-6-3.3(b) and (g), Dowdell is not entitled to receive additional credit time for his vocational training.

However, Dowdell also contends that under the doctrine of amelioration, the post-conviction court should have applied Indiana Code section 35-38-1-23 to his case. Section 35-38-1-23 was repealed in 1999, but was in effect at the time of Dowdell’s sentencing. “Under the doctrine of amelioration, a defendant who is sentenced after the

³ See now Ind. Code § 35-50-6-3.3(f).

effective date of a statute providing for more lenient sentencing is entitled to be sentenced pursuant to that statute rather than the sentencing statute in effect at the time of the commission or conviction of the crime.” Renfroe v. State, 743 N.E.2d 299, 300-01 (Ind. Ct. App. 2001) (“Renfroe should not be subject to an ex post facto amendment to the statute that would effectively deprive him of credit time.”).

Dowdell’s argument incorrectly assumes that, but for its repeal, he would be entitled to credit time under Indiana Code section 35-28-1-23. Prior to its repeal, the statute provided:

(a)...a person may petition the sentencing court for a reduction of sentence if:

- (1) the person has been sentenced to more than four (4) years imprisonment;
- (2) the person is in credit Class I;
- (3) there are less than two (2) years remaining until the person’s earliest possible release date;
- (4) the person has successfully completed an educational, a vocational, or a substance abuse program that the department has determined to be appropriate; and
- (5) the person has demonstrated a pattern of behavior consistent with evidence of rehabilitation.

(b) Upon the filing of a petition under subsection (a), the court may reduce the sentence of the person by up to two (2) years upon a finding that:

- (1) all conditions of subsection (a)(1) through (a)(5) exists; and
- (2) reduction of the sentence is in the best interests of justice.

(c) The court may grant or deny the petition without a hearing and without making written findings or conclusions.

Contrary to Dowdell’s assertion, he would not be entitled to credit time under section 35-38-1-23. That section provided offenders with an opportunity to petition the sentencing court for a sentencing reduction, and left the decision whether to grant such petition to the court’s discretion. Because Dowdell cannot establish that he would

necessarily receive additional credit time under the repealed law, he has not demonstrated how the repeal of Indiana Code section 35-38-1-23 disadvantaged him. Consequently, Dowdell's reliance on the doctrine of amelioration is misplaced.

We therefore conclude that the trial court properly denied Dowdell's petition for post-conviction relief.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.