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APPELLANT PRO SE:

WILLIAM LEE PALLETT
Carlisle, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM LEE PALLETT,)	
)	
Appellant-Plaintiff,)	
)	
vs.)	No. 77A01-0705-PC-200
)	
INDIANA PAROLE BOARD,)	
)	
Defendant.)	

APPEAL FROM THE SULLIVAN SUPERIOR COURT
The Honorable Thomas E. Johnson, Judge
Cause No. 77D01-0703-MI-68

December 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

William Lee Pallett appeals the dismissal of his petition for writ of *habeas corpus*. Pallett alleges his parole was revoked after he was discharged. Finding his petition is not frivolous, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

In 1977, Pallett was convicted in Wayne County of inflicting physical injury during the commission of a felony and sentenced to life in prison. On March 28, 2001, he was released on parole.

On September 11, 2001, he was arrested in Monroe County for operating while intoxicated. He was given a sixty-day suspended sentence and a year on probation. After the sentencing, Pallett was told to report to the probation department, but he fled. In January 2002, he was apprehended in Florida and returned to the Indiana Department of Correction for violating his parole. The Monroe County Court revoked the suspended sentence and ordered it served consecutively to his life sentence.

On November 6, 2002, Pallett was granted another parole from his life sentence. He alleges he was “turned over” to the Monroe County Jail to serve his sentence for operating while intoxicated. (Appellant’s App. at 9.) He was discharged from the Monroe County Jail on January 18, 2003. Upon his release, he settled in Bloomfield. At that time, he believed he was still on parole from his life sentence.

On August 2, 2003, Pallett was arrested in Joplin, Missouri for driving while intoxicated. The parole board revoked his parole on October 8, 2003. After he was denied parole in 2004, Pallett filed a petition for writ of *habeas corpus* in Sullivan County, where he was incarcerated. The Sullivan Superior Court dismissed his petition

after determining Pallett was seeking post-conviction relief and the petition had to be filed in the sentencing court. Pallett then filed a petition for post-conviction relief in Monroe County. That court also determined it lacked jurisdiction and dismissed. On March 19, 2007, Pallett again filed a petition for *habeas corpus* in the Sullivan Superior Court. Pursuant to Ind. Code § 34-58-1-1 and -2 (requiring courts to screen petitions filed by offenders), the court reviewed the petition and dismissed it, finding it was frivolous.¹

DISCUSSION AND DECISION

Ind. Code § 35-58-1-2 states a petition filed by an offender may not proceed if the trial court determines the claim is frivolous. A petition is frivolous if it is made primarily to harass a person or lacks an arguable basis in law or fact. Ind. Code § 35-58-1-2(b). We review *de novo* a dismissal pursuant to Ind. Code § 34-58-1-2. *Abdul-Wadood v. Batchelor*, 865 N.E.2d 621, 623 (Ind. Ct. App. 2007), *trans. denied* (Ind. 2007). We look to the well-pleaded facts in the petition to determine whether it contains the elements necessary to establish the offender is entitled to relief under some viable legal theory. *Smith v. Carrasco*, 850 N.E.2d 468, 470 (Ind. Ct. App. 2006).

¹ The court did not explicitly determine whether it had jurisdiction. We note Pallett's petition could have been treated as one for post-conviction relief (thus giving the sentencing court jurisdiction) or *habeas corpus* (giving Sullivan County jurisdiction as the place of incarceration). *Mills v. State*, 840 N.E.2d 354, 357 & n. 1 (Ind. Ct. App. 2006). To the extent Pallett is arguing the Sullivan County Court erred in dismissing his first petition for writ of *habeas corpus* for lack of jurisdiction, that argument has been waived by failure to appeal that ruling.

The trial court dismissed Pallett's petition before the State made an appearance or responded to his petition. Therefore, the State filed with us a "Notice of Non-Involvement of the State of Indiana and the Indiana Attorney General and Motion to Correct Record." On December 3, 2007, we granted the State's request and ordered removal of the Office of Attorney General as attorney of record for Appellee on our docket.

Pallett's argument is based on *Meeker v. Indiana Parole Board*, 794 N.E.2d 1105 (Ind. Ct. App. 2003), *trans. denied* 812 N.E.2d 796 (Ind. 2004). *Meeker* was aptly summarized in *State v. Metcalf*:

[Meeker] was serving two concurrent sentences following his convictions for drug dealing in 1991. Thereafter, Meeker was released to parole in 1995. While on parole, Meeker was convicted of several alcohol-related crimes in 1996 and was sentenced to serve the remainder of his 1991 sentence for dealing. While Meeker was incarcerated on the 1991 drug sentence, the Parole Board voted that "Meeker should be 'turned over' to another commitment" on July 21, 1998. On October 12, 2000, Meeker was released to parole after serving the five-year sentence less the amount of credit time that he had earned. The dealing convictions were used as the basis for Meeker's parole. After Meeker was convicted of carrying a firearm without a license in October 2001, his parole was revoked the following month. As a result, the Parole Board reinstated the remaining sentence on the 1991 drug dealing convictions.

Meeker ultimately appealed, and this court determined that the "turn over" by the Parole Board amounted to a discharge from his dealing sentence and that Meeker could not again be required to serve the remainder of his dealing sentence at a later date. Specifically, we observed that:

When the parole board "turned over" Meeker to begin serving the alcohol related sentences, it effectively discharged him from the remainder of the dealing convictions. There is no statutory authority or case law definition of "turn over" and we conclude that we must construe the phrase against the State. During the 1998 review, the parole board could have refused to "turn over" Meeker's sentence, as it had done in 1997, until he served the remainder of his fixed term. The parole board did not do so, and the State provides no support for its contention that Meeker could again be required to serve the remainder of his dealing sentence at some later time.

852 N.E.2d 585, 588-89 (Ind. Ct. App. 2006) (citations omitted), *trans. denied* 860 N.E.2d 595 (Ind. 2006).

Pallett's petition alleges the Department of Correction "turned him over" to the Monroe County Jail, thus discharging his life sentence. He further alleges, because he

was discharged from the Monroe County Jail in January 2003, there was no parole to revoke in October 2003. These allegations create an arguable basis in law and fact that he is entitled to release, and there is no suggestion his petition is made to harass a person. While the documentary evidence Pallett submitted to the trial court does not entirely support his allegations,² Pallett did not have a burden at this stage of the proceeding to present all possible evidence. His only burden was to show an “arguable basis” in law and fact. *See* I.C. § 35-58-1-2. Accordingly, he should be permitted to proceed.

Reversed and remanded.

CRONE, J., and DARDEN, J., concur.

² We note the record contains a document titled “Report of Investigation and Decision of Parole Board” that lists the parole board members’ votes on Pallett’s 2002 parole. (Appellant’s App. at 34.) The form lists the actions the board could take, including “Denied Parole,” “Denied Turnover,” “Granted Parole,” “Granted Turnover,” and “Continue.” (*Id.*) “Granted Parole” is checked; “Granted Turnover” is not. (*Id.*) The record also contains a letter from the Department of Correction notifying the Monroe County Sheriff’s Department that Pallett was scheduled for release on December 20, 2002. (Appellant’s App. at 32.) This letter gave the Monroe County Sheriff the option of picking him up on that date. The letter implies Pallett was on parole from his life sentence regardless of whether Monroe County decided to have him serve his other sentence at that time. To survive summary judgment, Pallett will need evidence the parole board intended to grant turnover, rather than parole.