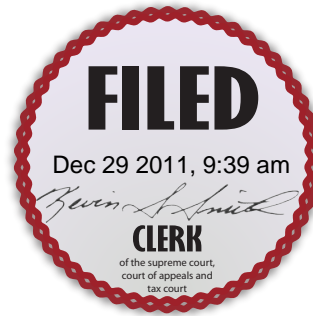


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TROY HOWARD, )  
 )  
 Appellant-Petitioner, )  
 )  
 vs. ) No. 79A04-1107-CR-375  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Respondent. )

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Randy J. Williams, Judge  
Cause No. 79D01-0205-FA-10

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**December 29, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Petitioner Troy Howard appeals the post-conviction court’s denial of his request for educational credit time. We affirm.

## **FACTS AND PROCEDURAL HISTORY**

Howard requested educational credit time for a high school diploma that he received from the Cornerstone Christian Correspondence School<sup>1</sup> (“CCCS”) while he was incarcerated with the Indiana Department of Correction (“DOC”). The DOC denied Howard’s request for educational credit time. Howard exhausted all administrative remedies, filed the instant petition for post-conviction relief (“PCR”), and now appeals the denial of that petition.

## **DISCUSSION AND DECISION**

### **A. Standard of Review**

Initially, we note that “[o]ur courts have long allowed defendants to bring an action regarding credit time via a [PCR] petition.” *McGee v. State*, 790 N.E.2d 1067, 1068 (Ind. Ct. App. 2003), *trans. denied*. Thus, Howard’s petition will be treated as a petition for PCR pursuant to Indiana Post-Conviction Rule 1. *Stevens v. State*, 895 N.E.2d 418, 419 (Ind. Ct. App. 2008).

Post-conviction procedures do not afford the convicted an opportunity for a “super appeal.” *Matheney v. State*, 688 N.E.2d 883, 890 (Ind. 1997), *reh’g denied, cert. denied*, 525 U.S. 1148, 119 S.Ct. 1046, 143 L.Ed.2d 53 (1999). Rather, they create a narrow remedy for subsequent collateral challenges to convictions and sentences, challenges that must be based on grounds enumerated in the post-conviction rules. *Id.*; see also Ind. Post-Conviction Rule 1. Petitioners bear the burden of establishing their grounds by a preponderance of the evidence. *Id.* When appealing the negative judgment of a post-conviction court, petitioners must show that the evidence, when taken as a whole, “leads unerringly and unmistakably to a conclusion opposite to that

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<sup>1</sup> CCCS is a correspondence school based in Townsend, Georgia.

reached by the trial court.” *Id.* at 890-891 (quoting *Weatherford v. State*, 619 N.E.2d 915, 917 (Ind. 1993), *reh ’g denied*). On appeal from a denial of post-conviction relief, we neither reweigh the evidence nor judge witness credibility. *Neville v. State*, 663 N.E.2d 169, 171-172 (Ind. Ct. App. 1996).

*Diaz v. State*, 753 N.E.2d 724, 727 (Ind. Ct. App. 2001).

## B. Credit for a High School Diploma

Indiana Code section 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 (1) of the following:
    - \*\*\*\*
    - (B) A high school diploma.<sup>[2]</sup>
    - \*\*\*\*
- (d) The amount of credit time a person may earn under this section is the following:
  - \*\*\*\*
  - (2) One (1) year for graduation from high school.

Ind. Code § 35-50-6-3.3(a), -3.3(d). “The intent behind the educational credit time statute [is] to enhance rehabilitation by providing [an] incentive to further one’s education while incarcerated.” *McGee*, 790 N.E.2d at 1070. The DOC may not unilaterally deny credit for an out-of-state diploma so long as the standards of instruction for earning a diploma from the out-of-state school are substantially similar to those in Indiana. *Glass v. Wrigley*, 899 N.E.2d 652, 654 (Ind. Ct. App. 2008), *trans. denied*. Therefore, in order to receive educational

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<sup>2</sup> Effective April 1, 2011, the General Assembly amended Indiana Code section 35-50-6-3.3(a)(3)(B) to provide that an inmate earns credit time if he obtains a high school diploma “if the person has not previously obtained a general educational development (“GED”) diploma. The State argues that because it is undisputed that Howard received his GED before being incarcerated, he is not eligible for credit time for earning his high school diploma. However, because Howard earned the high school diploma at issue no later than August 13, 2010, the subsequent April 1, 2011 revision is inapplicable.

credit time for receiving a high school diploma from an out-of-state school, Howard was required to demonstrate that the standard of instruction at the school was substantially similar to that in Indiana. *Id.*

In requesting educational credit time, Howard submitted a letter of congratulations from CCCS which indicated that he had passed all of the necessary exams. The DOC denied Howard's request because the CCCS high school program was not a DOC-approved program. After exhausting all administrative remedies, Howard sought relief from the post-conviction court. However, despite Howard's claims, Howard presented no evidence to the post-conviction court demonstrating that CCCS's high school program was comparable to the educational program provided by Indiana public high schools, that its curriculum included areas of study required by Indiana law, or that CCCS was accredited by any recognized governmental educational authority.

The burden of proof is on the inmate to show that the standard of instruction of the school was substantially similar to those approved by the DOC and that the school either provided proctors for the examinations or required graduation examinations equivalent to those approved by the DOC. *Glass*, 988 N.E.2d at 654. Howard, however, failed to provide any documentation to demonstrate that CCCS required proctoring of its exams or that the content of its examinations was equivalent to the standards required in Indiana. In claiming that the CCCS program was similar to that offered at Indiana public high schools, Howard argues that the congratulatory letter he received shows that he successfully completed course study in language arts, writing skills, social studies, science, and mathematics. While this

may be true, Howard has failed to prove that these courses covered all areas of study required in Indiana or that the requirements for the successful completion of these courses of study satisfied Indiana standards.

Howard also argues that the DOC should have granted him credit for receiving his diploma from CCCS because CCCS was accredited by The Accrediting Commission International. Again, while this may be true, Howard presented no information relating to The Accrediting Commission International or its standards for accreditation. Moreover, the record demonstrates that CCCS has not been accredited by the United States Department of Education, the State of Georgia, or any other governmental educational authority. Based on the evidence before it, the post-conviction court found that Howard was not entitled to education credit for completing CCCS's high school program. We agree with the post-conviction court and conclude that it did not err when it denied Howard's petition.<sup>3</sup> *See id.* (providing that the post-conviction court did not err in denying a petitioner's request for educational credit time when the petitioner failed to show that the correspondence school in question had instructional standards similar to those in Indiana or that the correspondence school was accredited by any governmental educational authority).

### **C. Constitutional Claims**

Howard also claims that the DOC's denial of his request for educational credit time

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<sup>3</sup> To the extent that Howard claims that the legislature's intent with regard to educational credit time was thwarted by the decisions of the DOC and the post-conviction court, we disagree. The legislature intended to encourage inmates to further their education while incarcerated by completing a DOC-approved course of study. The denial of credit time for completing a non-approved course of study is not contrary to the above-stated legislative intent.

violates his rights under the Equal Protection Clause of the United States Constitution and the Equal Privileges Clause of the Indiana Constitution. Howard's claims, however, are based upon his unsubstantiated claim that others may be granted educational credit time for receiving a high school diploma from CCCS when he will not be. Howard points to no part of the record indicating that other individuals have actually been awarded educational credit time for receiving a high school diploma from CCCS. Accordingly, Howard has failed to establish the disparate treatment necessary to demonstrate an Equal Protection or Equal Privileges violation.<sup>4</sup>

The judgment of the post-conviction court is affirmed.

KIRSCH, J., and BARNES, J., concur.

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<sup>4</sup> While we affirm the judgment of the post-conviction court, we applaud Howard's efforts to further his education and encourage him to continue this effort.