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**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS E. GLOVER,

Appellant-Petitioner,

vs.

STATE OF INDIANA,

Appellee-Respondent.

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No. 84A05-0605-PC-271

APPEAL FROM THE VIGO SUPERIOR COURT

The Honorable Michael H. Eldred, Judge
Cause No. 84D01-9904-CF-113

December 7, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Thomas Glover (“Glover”) filed a petition in Vigo Superior Court for educational credit time. His petition was denied and Glover appeals. Concluding that Glover failed to exhaust his administrative remedies in the Department of Correction, and therefore, that the trial court lacked subject matter jurisdiction in this case, we dismiss Glover’s appeal.

Facts and Procedural History

On July 30, 1999, Glover pled guilty to Class B felony dealing in cocaine and Class D felony resisting law enforcement. He was sentenced to serve concurrent terms of ten years with four years suspended for the dealing in cocaine conviction and eighteen months for the resisting law enforcement conviction. On November 19, 2002, the court found that Glover had violated his probation and ordered him to serve the previously suspended four-year sentence. Glover was ordered to serve that sentence consecutive to a sentence imposed in a separate cause.

On April 18, 2006, Glover filed a petition for additional credit time. In the petition, Glover stated that he had received his high school diploma and was therefore entitled to educational credit time pursuant to Indiana Code section 35-50-6-3.3. Glover alleged that the Department of Correction erroneously denied his request for additional credit time because he did not receive his diploma from a school accredited by the State of Indiana. The trial court denied his petition and Glover now appeals.

Discussion and Decision

The State contends that the trial court lacked subject matter jurisdiction over Glover’s petition because Glover failed to exhaust his administrative remedies with the

Department of Correction. “[T]he question of subject matter jurisdiction entails a determination of whether a court has jurisdiction over the general class of actions to which a particular case belongs.” Samuels v. State, 849 N.E.2d 689, 690 (Ind. Ct. App. 2006), trans. denied. “The only inquiry relevant to a determination of whether the post-conviction court had subject matter jurisdiction is whether the kind of claim advanced by a petitioner in the post-conviction court falls within the general scope of authority conferred upon that court by constitution or statute.” Id. at 690-91. Moreover, subject matter jurisdiction cannot be waived. Id.

Post-conviction relief is entirely defined in scope by the post-conviction rules our supreme court has adopted. Id. Post-conviction Rule 1(1)(a) (2006) provides that post-conviction relief is only available if the petitioner claims:

- (1) that the conviction or sentence was in violation of the Constitution of the United States or the constitution or laws of this state;
- (2) that the court was without jurisdiction to impose sentence;
- (3) that the sentence exceeds the maximum authorized by law, or is otherwise erroneous;
- (4) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) that his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; [or]
- (6) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy[.]

Glover is not challenging his conviction or the sentence that was imposed. Furthermore, he does not claim he is entitled to immediate release from prison and does not assert that his sentence exceeds the authorized sentence. Rather, his sole argument on appeal is that he was improperly denied educational credit time for earning his high school diploma.

In Members v. State, 851 N.E.2d 979 (Ind. Ct. App. 2006), our court made the following observations concerning educational credit time:

[T]he legislative intent behind the educational credit time statute is to enhance rehabilitation by providing offenders with the incentive to further their education while incarcerated. While the trial court determines the initial credit time when an offender is sentenced, modification to that credit time -which includes modification because of educational credit- is the responsibility of the DOC. Stated differently, the trial court imposes the sentence, and the DOC administers the sentence. As a consequence, the DOC maintains the responsibility to deny or restore credit time.

Id. at 982-83 (internal citations omitted).

In Members and Samuels, our court noted that the General Assembly has established that offender grievances arising out of administrative acts that affect an offender are to be resolved through a departmental grievance procedure.¹ See id. at 983;

¹ Indiana Code section 11-11-1-2 provides:

The commissioner shall implement a departmental procedure in which a committed person may submit grievances arising out of the administrative acts of the department that affect that person. Although the procedure should encourage flexibility and informality in the resolution of grievances, it must be consistent with the following minimum requirements:

- (1) A committed person shall be informed of the grievance procedure as part of his orientation.
- (2) The department must periodically communicate to a committed person the rules and policies affecting him.
- (3) The department shall keep the person reasonably informed as to the status and ultimate disposition of his grievance.

Samuels, 849 N.E.2d at 692. Glover is claiming that the Department of Correction erroneously denied his request for educational credit time. Therefore, his grievance is first with the Department of Correction, and he must exhaust all of his administrative remedies with the Department of Correction before resorting to the judicial system. See Members, 851 N.E.2d at 983; Samuels, 849 N.E.2d at 692.

From the record before us, it is apparent that Glover has failed to exhaust his available remedies within the Department of Correction. As a result, the trial court lacked subject matter jurisdiction to entertain Glover's petition for educational credit time, and therefore, the judgment must be set aside and this appeal dismissed.

Appeal dismissed.

KIRSCH, C. J., and SHARPNACK, J., concur.

(4) The department may not undertake any act or practice that would discipline a person for, or otherwise discourage or limit him from, utilizing the grievance procedure.

Ind. Code § 11-11-1-2 (2004).