

MEMORANDUM DECISION

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APPELLANT *PRO SE*

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IN THE COURT OF APPEALS OF INDIANA

Kurt J. Kemp,
Appellant-Petitioner,

v.

Mark Sevier,
Appellee-Respondent.

July 25, 2023

Court of Appeals Case No.
22A-MI-2527

Appeal from the Henry Circuit
Court

The Honorable Kit C. Dean Crane,
Judge

Trial Court Cause No.
33C02-2208-MI-75

Memorandum Decision by Judge Bradford
Judges Crone and Kenworthy concur.

Bradford, Judge.

Case Summary

- [1] Kurt Kemp is currently serving an eleven-year sentence in the Indiana Department of Correction (“the DOC”). In August of 2022, Kemp petitioned for a writ of habeas corpus against Warden Mark Sevier, alleging that the DOC had miscalculated his earliest possible release date (“EPRD”) after it had refused to award him educational credit time that he claimed to have earned. Sevier moved for summary disposition. The trial court granted Sevier’s motion and denied Kemp’s habeas petition. Kemp argues that the DOC improperly denied his educational credit time and, consequently, the trial court erred in denying his habeas petition. We affirm.

Facts and Procedural History

- [2] Kemp is currently incarcerated in the DOC after having been convicted of child exploitation, possession of child pornography, and voyeurism. While serving his eleven-year sentence, Kemp attempted to earn credit time through the DOC’s educational credit time program.

A. The DOC’s Credit Time Structure

- [3] Indiana Code section 35-50-6-3.3(b)(3)(E) allows eligible offenders to participate in individualized case management plans approved by the DOC, which are, in part, intended to help offenders maximize their educational credit time. (Appellant’s App. Vol. II pp. 34–35) Offenders who opted into this case plan credit time (“CPCT”) structure earned educational credit time based on

participation and progress made towards identified goals in their case plan assessments. Instead of earning educational credit time at the completion of a traditional program, offenders receive the credit time at periodic reviews, the frequency of which depends on the time until a given offender's EPRD.

Offenders who participate in CPCT are eligible to earn the lesser of: (1) one-third of their total applicable credit time between January 1, 2022, through their current EPRD, or (2) two years (four years for offenders committed before July 1, 2014).

B. Kemp's Participation in CPCT

[4] In October of 2021, Kemp chose to participate in CPCT. Kemp's EPRD is October 19, 2023. From January 1, 2022, through his EPRD, Kemp had 657 days remaining on his sentence. By opting into CPCT, Kemp became eligible to earn 219 days (one-third his remaining sentence) of credit time. Kemp completed an H-Unit Military Veteran's course, a Purposeful Living Units Serve ("PLUS") program, and the Indiana Sex Offender Management and Monitoring program; however, the PLUS program is the only one of those eligible for educational credit, which Kemp completed in April of 2021, before he had opted into CPCT. The DOC denied Kemp's credit time for completing the PLUS program because Kemp's underlying offenses had disqualified him from earning time under that program.

[5] In accordance with his participation in CPCT, Kemp was eligible for three reviews prior to his release, at each of which he could receive credit of up to seventy-three days. The first occurred in June of 2022, and the remaining two

had been scheduled for November of 2022 and May of 2023. These reviews generally consider all the programs an offender completed through the date of his last review.

C. Kemp's Habeas Petition

- [6] On August 8, 2022, Kemp petitioned for a writ of habeas corpus alleging that the DOC had miscalculated his EPRD and had improperly denied him his educational credit time and, as a result, he was entitled to immediate release. In his petition, Kemp claimed that his applicable sentence was one-third of the seven-year period from the date of his arrest to his EPRD of October 18, 2023. Consequently, Kemp calculated his educational credit time to be 843 days, which would have entitled him to be released on October 18, 2021.
- [7] In September of 2022, Sevier moved for summary disposition. In Sevier's motion, he alleged that Kemp's EPRD had been calculated correctly and, thus, Kemp was not entitled to immediate release. According to Sevier's motion, Kemp had not completed a DOC-approved program for educational credit while enrolled in CPCT. Sevier further explained that, even if Kemp had completed the PLUS program after opting in to CPCT, sex offenders could not earn education credit time for completing PLUS. In October of 2022, the trial court granted Sevier's motion and denied Kemp's habeas petition.

Discussion and Decision

[8] “Every person whose liberty is restrained, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered from the restraint if the restraint is illegal.” Ind. Code § 34-25.5-1-1. The purpose of a writ of habeas corpus is to determine the lawfulness of the defendant’s detention or custody. *Hardley v. State*, 893 N.E.2d 740, 742 (Ind. Ct. App. 2008). A trial court must provide a writ of habeas corpus if a petitioner is unlawfully incarcerated and entitled to immediate release. *Id.* We review decisions on habeas petitions for an abuse of discretion. *Id.* (citing *Benford v. Marvel*, 842 N.E.2d 826, 828 (Ind. Ct. App. 2006)). Without reweighing the evidence, we will consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom. *Id.*

[9] We review an order granting summary disposition the same as a grant of summary judgment. *Norris v. State*, 896 N.E.2d 1149, 1151 (Ind. 2008). On summary judgment, the movant must demonstrate that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (citing Ind. T.R. 56). All reasonable inferences are drawn in favor of the non-moving party. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014) (citing *Williams*, 914 N.E.2d at 761). The “trial court’s grant of summary judgment is ‘clothed with a presumption of validity[,]’” so the movant must persuade us that the trial court had erred. *Cox v. SBC*, 816 N.E.2d 481, 484 (Ind. Ct. App. 2004) (quoting *Wilson v. Royal Motor Sales, Inc.*, 812 N.E.2d 133, 135 (Ind. Ct. App. 2004)), *trans. denied*. Summary disposition, like summary judgment, is a matter reviewed de novo

when the determinative issue is a matter of law, not fact. *Norris*, 896 N.E.2d at 1151 (citing *Burnside v. State*, 858 N.E.2d 232, 237 (Ind. Ct. App. 2006)). If, as here, there is no genuine issue of material fact, we will review the trial court's summary disposition grant de novo. *Id.*

[10] Here, Kemp argues that the trial court wrongly denied his habeas petition because the DOC had denied him his educational credit time and, as a result, he is entitled to immediate release. We disagree. While Kemp completed several programs, according to John Mather, the executive director of the DOC's Programs and Re-Entry Unit, only the PLUS program was eligible for educational credit time. However, Kemp completed that program in April of 2021 before he had opted into CPCT and could have received educational credit for it. Further, and more importantly, even if Kemp had completed the PLUS program after opting in, he would still be ineligible to receive educational credit time "due to his underlying criminal charge[s]." Appellant's App. Vol. II p. 37. Indeed, Indiana Code section 35-50-6-3.3(d)(8) explains that a person can earn

[n]ot more than a total of six (6) months [...] for the completion of one (1) or more reformatory programs approved by the department of correction. However, a person who is serving a sentence for an offense listed under IC 11-8-8-4.5 may not earn educational credit time under this subdivision.

Kemp is a sex offender after having been convicted of two offenses listed in Indiana Code section 11-8-8-4.5: child exploitation and possession of child pornography. The PLUS program is approved by the DOC as a reformatory

program. *See* <https://www.in.gov/idoc/files/policy-and-procedure/0104101.pdf> (last visited July 17, 2023). Therefore, he is ineligible to receive educational credit time for completing the PLUS program in accordance with Indiana Code section 35-50-6-3.3(d)(8), the DOC did not improperly deny or restrict his credit time, and the trial court did not err in concluding that he is not entitled to immediate release.

[11] The judgment of the trial court is affirmed.

Crone, J., and Kenworthy, J., concur.