MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Larry D. Blanton, Jr.,
Appellant-Petitioner,

v.

Mark Sevier, Indiana Parole Board and Indianapolis Counseling Centers,[1]
Appellees-Respondents.

March 12, 2021

Court of Appeals Case No. 20A-MI-1658

Appeal from the Henry Circuit Court

The Honorable Kit C. Dean Crane, Judge

Trial Court Cause No. 33C02-2003-MI-31

[1] We note that Indianapolis Counseling Centers has not filed an appearance in this case and has not participated in this case. However, because Indianapolis Counseling Centers was a party of record in the trial court, it is a party on appeal. *See* Ind. Appellate Rule 17(A).

Kirsch, Judge.

[1] Larry D. Blanton, Jr. ("Blanton"), who is incarcerated at the New Castle Correctional Facility, appeals, pro se, the trial court's order denying his petition for writ of habeas corpus. Blanton raises several issues on appeal of which we find the following dispositive: whether the trial court erred in finding that his petition for writ of habeas corpus should be treated as an unauthorized successive petition for post-conviction relief and therefore summarily denying his petition.

[2] We affirm.

Facts and Procedural History

[3] In February 2006, Blanton was convicted of two counts of Class A felony child molesting, one count of Class A felony attempted child molesting, and one count of Class C felony child molesting in Monroe County and was sentenced on May 4, 2006 to three thirty-five-year consecutive sentences with ten years suspended on each sentence for the Class A felony convictions and a five-year-sentence for the Class C felony conviction to be served concurrently. *Blanton v. State*, No. 53A01-0606-CR-226, 2007 WL 1149994, at *2 (Ind. Ct. App. Apr. 19, 2007). After a direct appeal of his convictions and sentence in which a panel of this court found Blanton's sentence to be inappropriate, he was resentenced on October 12, 2007 to three concurrent thirty-year sentences for each of his Class A felonies and a five-year concurrent sentence for his Class C felony conviction. *Blanton v. State*, No. 53A05-1708-CR-1895, 2018 WL

770865, at * 1 (Ind. Ct. App. Feb. 8, 2018). Therefore, his thirty-year-sentences will not expire until 2036. Blanton filed a petition for post-conviction relief in 2009, which was denied, and such denial was affirmed on appeal to this court. *Blanton v. State*, No. 53A04-1410-PC-509, 2015 WL 4515697, at * 3, * 8 (Ind. Ct. App. July 27, 2015).

[4] On May 27, 2018, Blanton was released to parole. *Appellant's App. Vol. 2* at 10. On August 20, 2019, he was arrested for violating his parole as a result of violating three conditions of his parole: possession of obscene or explicit materials; possession of a computer or electronic device with internet access; and use or possession of alcohol or controlled substance. *Id*. at 37. On September 17, 2019, Blanton appeared before the Indiana Parole Board for a revocation hearing, and the parole board found by a preponderance of the evidence that he violated the three conditions of his parole. *Id*. at 39. His parole was revoked, and he was ordered to serve the balance of his sentence. *Id*.

[5] On March 2, 2020, Blanton filed a petition for writ of habeas corpus, naming the warden of the New Castle Correctional Facility and the Indiana Parole Board as respondents and asserting that his detention was illegal because the parole conditions he had been found to have violated, among other conditions of parole, were improper and unconstitutional, because his parole revocation hearing violated his right to due process, because the search that uncovered his parole violations was unconstitutional, because his good time and education credit had been taken from him, and because he was denied due process when

he was determined to be a sexually violent predator. *Id*. at 8-29. On May 7, 2020, Blanton filed a motion for summary judgment regarding his petition. *Id*. at 45-51. On May 20, 2020, Mark Sevier, who was the warden of the New Castle Correctional Facility, and the Indiana Parole Board ("the Respondents") filed a motion for summary disposition under Indiana Post-Conviction Rule 4(g) and attached a copy of Blanton's previous post-conviction decision under cause number 53A04-1404-PC-509. *Id*. at 57-76. On the same date, the post-conviction court granted the Respondents' motion for summary disposition and denied Blanton's petition for writ of habeas corpus, construing it as a petition for post-conviction relief. *Id*. at 7. On June 16, 2020, Blanton filed a motion to correct error, and the Respondents filed their response, opposing Blanton's motion on July 8, 2020. *Id*. at 82-87, 88-90. On July 14, 2020, Blanton filed a reply in support of his motion and amended his reply on July 14, 2020. *Id*. at 91-97, 98-103. Blanton's motion to correct error was deemed denied on August 1, 2020 because no ruling on the motion was entered by the trial court. *See* Ind. Trial Rule 53.3(A). Blanton now appeals.

Discussion and Decision

[6] The trial court in this case determined that Blanton's petition for writ of habeas corpus should be treated as petition for post-conviction relief and summarily denied his petition as an unauthorized successive petition for post-conviction relief. We review the grant of a motion for summary disposition in post-conviction proceedings on appeal in the same way as a motion for summary judgment in a civil matter. *Brown v. State*, 131 N.E.3d 740, 742 (Ind. Ct. App.

2019) (citing *Norris v. State*, 896 N.E.2d 1149, 1151 (Ind. 2008)), *trans. denied*, *cert. denied*, 140 S. Ct. 2783 (2020). Thus, summary disposition -- like summary judgment -- is a matter for appellate *de novo* review. *Id.*

[7] Blanton argues that the trial court erred in determining that his petition for writ of habeas corpus should be treated as a petition for post-conviction relief because his petition challenged the constitutionality of the State's authority to restrain his liberty and claimed he was being held illegally. Blanton contends that his petition did not challenge his conviction or sentence because the petition challenged the legality of his parole revocation and the constitutionality of the parole conditions to which he had been subjected and was therefore properly a petition for writ of habeas corpus. Indiana Code section 34-25.5-1-1 provides that "[e]very 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." Thus, the purpose of a writ of habeas corpus is to determine the lawfulness of a petitioner's detention. *Randolph v. Buss*, 956 N.E.2d 38, 40 (Ind. Ct. App. 2011), *trans. denied*. The trial court must provide a writ of habeas corpus if the petitioner is unlawfully incarcerated and entitled to immediate release. *Id.*

[8] Although Blanton asserts that he is entitled to immediate release from incarceration, he is actually challenging the legality of his parole revocation and his parole conditions. In such a situation, even if the legality of his parole revocation and parole conditions were found to be in error, such an error would only entitle him to be released back to parole again and not to a discharge from

his sentence. Parole is "'the release of a prisoner from imprisonment before the full sentence has been served.'" *Harris v. State*, 762 N.E.2d 163, I67 (Ind. Ct. App. 2002) (quoting Black's Law Dictionary 1139 (7th ed.1999)), *trans. denied*. Parole "'is a substitution during the continuance of the parole, of a lower grade of punishment, by confinement in the legal custody and under the control of the warden within the specified prison bounds outside the prison, for the confinement within the prison adjudged by the court.'" *Bleeke v. Lemmon*, 6 N.E.3d 907, 937-38 (Ind. Ct. App. 2014) (quoting *Jenkins v. Madigan,* 211 F.2d 904, 906 (7th Cir. 1954), *cert. denied*, 348 U.S. 842 (1954)). "So '[w]hile a parole is an amelioration of punishment, it is, in legal effect, still imprisonment.'" *Id*. at 938 (quoting *Overlade v. Wells,* 234 Ind. 436, 446, 127 N.E.2d 686, 691 (1955)). "'While on parole the prisoner remains in the legal custody of the parole agent and warden of the prison from which he is paroled until the expiration of the maximum term specified in his sentence or until discharged as provided by law.'" *Id*. (quoting *Overlade*, 234 Ind. at 446, 127 N.E.2d at 690). Therefore, even if we found that Blanton's parole revocation was improper, the outcome would be to release him back to parole, which is still imprisonment or restraint, so returning him to parole would not be discharging him from restraint but only changing the location of the restraint. In his petition for writ of habeas corpus, Blanton was only seeking a change in the location of his restraint and not a discharge from imprisonment. Blanton's petition, thus, was properly a petition for post-conviction relief as he challenged his parole

revocation and was not subject to immediate release from unlawful custody.[2] *See* Ind. Post-Conviction Rule l(2); *Hawkins v. Jenkins*, 374 N.E.2d 496, 498 (Ind. 1978). The trial court did not err when it determined that Blanton's petition should be treated as a petition for post-conviction relief.

[9] Because Blanton previously litigated one petition for post-conviction relief unsuccessfully, he was required to seek leave of this court to pursue a successive petition for post-conviction relief. *See* P-C.R. 1(12)(a). Blanton, however, failed to obtain permission to file a successive post-conviction petition. Accordingly, the trial court properly denied Blanton's petition for a writ of habeas corpus.[3]

[10] Blanton also contends that the trial court erred in denying his petition by summary disposition and that he was entitled to a hearing on his petition. In making this contention, Blanton cites to law and statutes pertaining to habeas corpus petitions. His argument is misplaced as we have determined that his petition was properly one for post-conviction relief and not for habeas corpus relief. An action for post-conviction relief may be decided by summary disposition on the pleadings. P-C.R. 1(4)(g).

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[2] We also note that, although not raised, the petition was properly filed in the county of incarceration and not the county of conviction because a person who claims that the "person's parole has been unlawfully revoked must file a verified petition with the clerk of the court in the county in which the person is incarcerated." Ind. Post-Conviction Rule 1(2).

[3] Although Blanton spends considerable space in his brief arguing the merits of his petition, only the trial court's denial of Blanton's petition as an unauthorized successive petition for post-conviction relief is before this court. Accordingly, we do not reach the merits as they are not before this court at this time.

[11] In arguing that he is entitled to be released from incarceration, Blanton also contends that his earned credit time was stripped from him unlawfully when he was released to parole on May 27, 2018. Blanton seems to argue that, pursuant to Indiana Code section 11-13-3-2, he was required to be released on parole after serving half of his sentence less the credit time earned. He maintains that, at the time he was released to parole on May 27, 2018, he had served half of his sentence and with his accrued credit time, he had completed his thirty-year sentence when he was released from incarceration and could not be placed on parole because his entire sentence had already been served. Therefore, he argues, placing him on parole and subjecting him to the conditions of parole, stripped him of his earned credit time, and he should be released from incarceration.

[12] Indiana Code section 11-13-3-2 provides in pertinent part:

> (a) Release on parole and discharge of an offender sentenced for an offense under IC 35-50 shall be determined under IC 35-50-6.
>
> (b) Parole and discharge eligibility for offenders sentenced for offenses under laws other than IC 35-50 is as follows:
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> . . . .
>
> (2) A person sentenced upon conviction of a felony to a determinate term of imprisonment is eligible for consideration for release on parole upon completion of one-half (1/2) of his determinate term of imprisonment or at the expiration of twenty (20) years, whichever comes first, less the credit time he has earned with respect to that term.

Ind. Code § 11-13-3-2(a), (b)(2). Blanton asserts that, because his convictions were for crimes under Indiana Code section 35-42-4-3, he was not sentenced under Indiana Code article 35-50 but was instead sentenced under Indiana Code section 35-42-4-3. Blanton is incorrect as he was *convicted* under Indiana Code section 35-42-4-3 but was *sentenced* under Indiana Code section 35-50-2-4, the sentencing statue for Class A felonies. Therefore, pursuant to Indiana Code section 11-13-3-2(a), Blanton's release on parole is determined by Indiana Code article 35-50. *See* Ind. Code § 11-13-3-2(a) ("Release on parole and discharge of an offender sentenced for an offense under IC 35-50 shall be determined under IC 35-50-6."). Under Indiana Code section 35-50-6-1(e), "[w]hen a person described in this subsection[, a sexually violent predator,] completes the person's fixed term of imprisonment, less credit time earned with respect to that term, the person shall be placed on parole for the remainder of the person's life." Blanton has been designated a sexually violent predator, so this subsection applies to him.

[13] Blanton was sentenced to an aggregate thirty-year sentence in 2006, and his sentence would be completed in 2036. Blanton was released to parole in May 2018, which meant that he had served his fixed term of imprisonment less the credit time he had earned. When he was released in May 2018, he was not arbitrarily stripped of his earned credit time as he claims. He was instead released to parole because he had completed his fixed term of imprisonment less the credit time he had earned. "Credit time is applied to determine a defendant's release date from prison but *does not* reduce the sentence itself."

Willet v. State, 151 N.E.3d 1274, 1279 (Ind. Ct. App. 2020) (citing *Miller v. Walker*, 655 N.E.2d 47, 48 n.3 (Ind. 1995)). Additionally, "[a] person whose parole is revoked shall be imprisoned for all or part of the remainder of the person's fixed term. However, the person shall again be released on parole when the person completes that remainder, less the credit time the person has earned since the revocation." Blanton's earned credit time was not taken from him when he was released to parole in May 2018; instead, his earned credit time in conjunction with the time he had served allowed him to be released to parole, and he will continue to accrue earned credit time now that he is incarcerated due to his parole violation. Blanton had the benefit of his credit time when he was released on parole in the first place, and his credit time did not reduce his actual sentence. As a result, Blanton was not deprived of his earned credit time.

[14] The trial court properly treated Blanton's petition for writ of habeas corpus as a petition for post-conviction relief. Because he had previously filed a petition for post-conviction relief, he was required to seek leave of this court to pursue a successive petition for post-conviction relief, which he did not do. Accordingly, the trial court did not err in denying Blanton's petition for writ of habeas corpus. The trial court also did not err in summarily denying Blanton's petition without a hearing, and therefore, the merits of his petition are not before us.

Additionally, to the extent that Blanton argues that he was arbitrarily deprived of good time credit, he is mistaken.[4] We affirm the trial court.

[15] Affirmed.

Bradford, C.J., and May, J., concur.

[4] Blanton also asserts that he has been deprived of due process due to the determination that he is a sexually violent predator and had no opportunity to challenge the determination. However, there is a process contained in Indiana Code section 35-38-1-7.5(g), under which a person who is a sexually violent predator may petition the court to consider whether the person should no longer be considered a sexually violent predator. "The person may file a petition under this subsection not earlier than ten (10) years after: (1) the sentencing court or juvenile court makes its determination under subsection (e); or (2) the person is released from incarceration or secure detention." Ind. Code § 35-38-1-7.5(g). We, therefore, conclude that Blanton has not been denied any right to challenge the determination that he is a sexually violent predator.