

MEMORANDUM DECISION

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

Robertson Fowler,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

June 21, 2022

Court of Appeals Case No.
21A-PC-1985

Appeal from the Marion Superior
Court

The Honorable Jeffrey L. Marchal,
Magistrate

Trial Court Cause No.
49G06-0609-PC-181103

May, Judge.

- [1] Robertson Fowler appeals following the trial court's order granting the State's motion for summary disposition with respect to his petition for post-conviction

relief and dismissing his petition. Fowler argues the trial court erred in finding he was not entitled to educational credit time following his completion of a career development training program. We affirm.

Facts and Procedural History

[2] On January 27, 2000, Fowler was sentenced to serve twenty years in the Indiana Department of Correction (“DOC”) after he was convicted of Class B felony child molesting¹ in Johnson County. Fowler was paroled in 2006. Shortly thereafter, the Indiana Parole Board revoked his parole because Fowler violated the terms of his parole when he committed Class B felony serious violent felon in possession of a firearm.² The trial court sentenced Fowler to fifteen years for possession of a firearm and enhanced the sentence by an additional fifteen years after finding Fowler to be a habitual offender.³ The court ordered Fowler to serve the new thirty-year sentence consecutive to his sentence for the child molesting offense.

[3] Fowler was returned to prison and continued to serve time with respect to his sentence for child molestation. On April 6, 2010, the Indiana Parole Board issued a decision stating Fowler was allowed to start serving his new commitment for unlawful possession of a firearm, and Fowler was placed on

¹ Ind. Code § 35-42-4-3.

² Ind. Code § 35-47-4-5(c).

³ Ind. Code § 35-50-2-8.

parole status with respect to his child molestation sentence. The decision stated: “This is not a discharge.” (Appellee’s App. Vol. II at 16.)

[4] On April 29, 2015, correctional staff disseminated a memorandum notifying inmates about the opportunity to participate in a career development training program (“Program”). The memorandum stated: “This is a ‘Reformative Program,’ for IDOC purposes. Successful completion may qualify the participant to receive up to an additional 90 days of earned credit time (non-sex offenders only).” (*Id.* at 11.) Fowler completed the Program on February 19, 2018, but DOC denied Fowler’s request for additional credit time. In 2019, Fowler “satisfied” his child-molestation sentence. (*Id.*)

[5] After receiving permission from this Court on June 21, 2020, to file a successive petition for post-conviction relief, Fowler filed a successive petition before the post-conviction court arguing DOC erroneously denied his request for additional credit time. The parties filed a joint submission of stipulated facts, and the State moved for summary disposition. On August 9, 2021, the post-conviction court entered an order with findings of fact and conclusions of law granting the State’s motion for summary disposition and denying Fowler’s petition for post-conviction relief. The post-conviction court concluded:

25. Here, the parties have stipulated that Fowler was neither revoked nor discharged at all relevant times to his participation in the Program. While he had begun serving the executed sentence under the newer cause [related to his firearm conviction], Fowler was not yet discharged by the Parole Board for the child molest case.

26. As Fowler was serving a sentence for child molest at the time of the completion of the Program, he was ineligible to earn educational credit for completion of the Program.

27. Fowler has failed to carry his burden. The law is with the State and against the Petitioner.

(Appellant’s App. Vol. I at 14-15) (internal citations omitted).

Discussion and Decision

[6] Initially, we note Fowler proceeds on appeal pro se. Litigants who elect to proceed pro se assume the risk they may not know how to accomplish all that a trained attorney may be able to accomplish. *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied, cert. dismissed*, 558 U.S. 1074 (2009).

Nonetheless, “[i]t is well settled that pro se litigants are held to the same legal standards as licensed attorneys.” *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016), *reh’g denied, trans. denied*. Consequently, “pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.” *Id.* We will not become an advocate for one of the parties or address an argument too poorly developed or expressed for us to understand. *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016).

[7] Fowler argues the trial court erred in granting the State’s motion for summary disposition. Our standard of review following the grant of a motion for summary disposition in a post-conviction relief proceeding is well-settled:

We review the grant of a motion for summary disposition in post-conviction proceedings on appeal in the same way as a civil motion for summary judgment. *Norris v. State*, 896 N.E.2d 1149, 1151 (Ind. 2008). Summary disposition, like summary judgment, is a matter for appellate de novo review when the determinative issue is a matter of law, not fact. *Id.* Summary disposition should be granted only if “there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Ind. Post-Conviction Rule 1(4)(g). “We must resolve all doubts about facts, and the inferences to be drawn from the facts, in the non-movant’s favor.” *Allen v. State*, 791 N.E.2d 748, 753 (Ind. Ct. App. 2003), *trans. denied*.

Komyatti v. State, 931 N.E.2d 411, 415-16 (Ind. Ct. App. 2010).

[8] Fowler contends that because he was serving time toward completion of his sentence on the firearm charge when he completed the Program, he should have been awarded ninety-days credit time notwithstanding that he had yet to be discharged from his sentence for child molesting. Indiana Code section 35-50-6-3.3 governs the award of credit time to prisoners following successful completion of educational programs. The statute provides:

(d) The amount of educational credit a person may earn under this section is the following:

* * * * *

(8) Not more than a total of six (6) months, as determined by the department of correction, for 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 under this subdivision.

Indiana Code section 11-8-8-4.5(3) defines “sex offender” as an individual convicted of any one of several sex offenses, including child molestation. Thus, a person serving a sentence for child molestation may not earn educational credit time.

[9] In *Hobbs v. Butts*, we explained:

With respect to any given sentence imposed for a felony, a person is in one of four stages. *Hannis v. Deuth*, 816 N.E.2d 872, 877 (Ind. Ct. App. 2004). First, he is waiting to start serving the sentence; second, he is serving the sentence; third, he is on parole on the sentence; and fourth, he is discharged from the sentence. *Id.*

83 N.E.3d 1246, 1250 (Ind. Ct. App. 2017). Parole is the release of a prisoner from imprisonment before the prisoner’s full term has been served. *Id.* at 1248 n.1. “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.” *Overlade v. Wells*, 127 N.E.2d 686, 690 (Ind. 1955). Thus, while parole is an “amelioration of punishment,” it is still, in legal effect, “imprisonment.” *Id.* at 691.

[10] Being released to parole on a sentence is distinct from being discharged. *See* Ind. Code § 35-50-6-1(b) (“A person released on parole remains on parole from

the date of release until the person's fixed term expires, unless the person's parole is revoked or the person is discharged from that term by the parole board."); *see also* Ind. Code § 35-50-6-1(d) ("When a sex offender (as defined in IC 11-8-8-4.5) completes the sex offender's fixed term of imprisonment, less credit time earned with respect to that term, the sex offender shall be placed on parole for not more than ten (10) years."). A "discharge" is the end of a sentence, with no time left to be served either on parole or in prison. *See Meeker v. Ind. Parole Bd.*, 794 N.E.2d 1105, 1109 (Ind. Ct. App. 2003) (holding Parole Board effectively discharged Meeker when it "turned over" his sentence and stating, "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 date"), *reh'g denied, trans. denied*.

[11] Fowler was released to parole on his sentence for child molestation on April 6, 2010, but he remained incarcerated in the DOC because he still had to serve his sentence for illegal possession of a firearm. Even the Parole Board's decision in 2010 releasing Fowler to parole on his child molestation sentence explicitly stated Fowler was not being discharged from that sentence. Fowler remained on parole with respect to his child molestation sentence until 2019 when he satisfied that sentence. Because Fowler was on parole for a sex offense when he completed the Program, he is not entitled to educational credit time for his completion of the Program, and therefore, we affirm the trial court's order granting summary disposition for the State and denying Fowler's petition for

post-conviction relief.⁴ *See Hale v. Butts*, 88 N.E.3d 211, 215-16 (Ind. Ct. App. 2017) (holding defendant was not discharged from sentence when released on parole and, thus, was not entitled to immediate release from prison).

Conclusion

[12] The post-conviction court did not err in granting the State’s motion for summary disposition and denying Fowler’s petition for post-conviction relief. Fowler was not yet discharged from his sentence for child molesting when he completed the Program, and therefore, he was ineligible to receive educational credit time for completion of the Program. We affirm.

[13] Affirmed.

Brown, J., and Pyle, J., concur.

⁴ While Fowler raises a secondary argument in his brief, we cannot discern its legal basis. (See Appellant’s Br. at 11) (“Regarding the implied facts in this case, this courts analysis maybe one of first impression in ordering this cause to be resolved under a nunc pro tunc amendment. It is within this courts purview and is not usurpation on the state.”) (errors in original). Thus, such contention is waived on appeal for failure to make a cogent argument as required by Rule of Appellate Procedure 46(8)(a). *See Matheney v. State*, 688 N.E.2d 883, 907 (Ind. 1997) (failure to make a cogent argument waives issue from consideration on appeal).