MEMORANDUM DECISION

APPELLANT PRO SE

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ATTORNEYS FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Shawn D. Colwell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 20, 2023

Court of Appeals Case No. 23A-CR-133

Appeal from the Madison Circuit Court

The Honorable Mark K. Dudley, Judge

Trial Court Cause No. 48D01-0509-FB-277

Memorandum Decision by Judge Brown
Judges Crone and Kenworthy concur.

Brown, Judge.

[1] Shawn D. Colwell, pro se, appeals the denial of his Verified Motion to Compel Sentence Computation. We affirm.

Facts and Procedural History

[2] In 2006, the trial court sentenced Colwell to an aggregate sentence of forty years with five years suspended for burglary resulting in bodily injury as a class A felony, battery resulting in bodily injury as a class A misdemeanor, criminal confinement as a class D felony, and robbery resulting in bodily injury as a class B felony. On direct appeal, this Court directed the trial court to reduce the robbery conviction to a class C felony and vacate the battery conviction. *See Colwell v. State*, No. 48A05-0604-CR-225 (Ind. Ct. App. January 26, 2007). In a chronological case summary ("CCS") entry dated April 5, 2007, the trial court amended the sentencing order.

[3] On November 4, 2022, Colwell, pro se, filed a Verified Motion to Compel Sentence Computation, which listed the Department of Correction ("DOC"), Amy R. Flake, and the DOC Disciplinary Board as respondents. Colwell asserted the DOC owed him 365 days of credit time. He argued that he "was convicted" of four disciplinary reports at the Indiana Youth Center on February 10, 2016, and "lost 540 days credit time." Appellant's Appendix Volume II at 24. He alleged that the DOC "took credit time twice from" him, he requested the DOC to correct the error, the DOC responded with "a hard copy 'Change of Commitment' it mailed to" him, "[t]he so-called 'errors' [DOC] noted on its 'Change of Commitment' were under conduct report 11-04-0044 as follows: '-90 GTC was not entered into the time screen,'" and "one other 'error'

discovered by 'Change of Commitment' was conduct report I.S.R. 11-11-0053" which stated that "-1TEC was not applied to the time screen." *Id.*

[4] Exhibit A, which was attached to Colwell's motion, is titled Change of Commitment, dated August 23, 2022, and indicates that the reason for change of commitment was a "DHB Error," and provides the following explanation of change in commitment:

> Upon the offender's request to review his time, it was discovered there were many DHB errors.
>
> – Conduct Report ISR 11-04-0044 with time sanctions -90GTC was not entered into the time screen
>
> – Conduct Report ISR 11-11-0053 -1TEC was not applied to the time screen and no appeal was filed
>
> – Restoration for 23 days dated 3/26/2014 was made in error, no record of restoration, only eligible for 45dy restoration during that ADP and was awarded 46dys total.
>
> – A conduct action dated 2/10/2016 in the time screen was found to have been entered in error.
>
> CHANGES MADE:
>
> – Entered note action for 10/15/2010 B231 conduct to reflect suspended time sanctions.
>
> – Entered Conduct ISR 11-04-0044 -90GTC into time screen
>
> – Conduct Report ISR 11-11-0053 -1TEC was applied
>
> – A conduct dated for 2/10/2016 was removed.
>
> – Action note dated 2/29/2020 entered stating ineligible for restoration of time during ADP 6/1/2015, due to A121 and A102

November 4, 2022 Verified Motion to Compel Sentence Computation at 3. The Change of Commitment was signed by Amy R. Flake as a Sentence Computation Specialist.

[5] A November 17, 2022 CCS entry states: "State to have thirty (30) days to file response and diary out." Appellant's Appendix Volume II at 16 (italics omitted). On December 16, 2022, the DOC, Flake, and the DOC Disciplinary Board filed a Response in Opposition to Petitioner's Verified Motion to Compel Sentence Computation and Motion for Summary Disposition.[1] They alleged that Jennifer Farmer, the Director of the Sentence Computation and Release Unit at the DOC, reviewed Colwell's records and confirmed that the DOC had properly calculated Colwell's sentence. They asserted that the determinations of credit time as requested by Colwell were strictly under the purview of the DOC and that Colwell improperly asked the trial court to exercise discretion in awarding him credit time to which he was not entitled.

[6] On December 19, 2022, the State "by and through, CATHERINE L WILSON, Prosecuting Attorney for the 50th Indiana Judicial Circuit" filed a response which argued that Colwell failed to show that he had exhausted any administrative remedies, the court lacked jurisdiction "to determine the issue regarding that which [Colwell] has petitioned," and the ability to award or not

[1] This response was noted in the CCS on December 21, 2022.

award Class I credit for actions that have taken place while in the DOC is within the exclusive control of the DOC. *Id.* at 30-31.

[7] On December 20, 2022, the trial court denied Colwell's motion. A January 2, 2023 CCS entry states: "After reviewing the Response filed 12-16-22, the court still denies the defendant's motion." *Id.* at 17 (italics omitted).

Discussion

[8] Before addressing Colwell's argument, we observe that although he is proceeding pro se, such litigants are held to the same standards as trained attorneys and are afforded no inherent leniency simply by virtue of being self-represented. *See Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014).

[9] Colwell argues that the trial court failed to hold an evidentiary hearing after he raised a number of material facts as to whether the DOC failed to properly calculate his credit time. He asserts the exhibits attached to his motion indicated that he was entitled to "such proper calculation as a matter of law." Appellant's Brief at 6. He disagrees with paragraphs 1, 7, 8, and 9(c) of the Response in Opposition to Petitioner's Verified Motion to Compel in which the DOC, Flake, and the DOC Disciplinary Board stated:

> 1. Petitioner Shawn Colwell is currently confined at the New Castle Correctional Facility.
>
> * * * * *
>
> 7. Ms. Farmer has reviewed Offender Colwell's records and program history, and she has confirmed that the IDOC has

> properly calculated Offender Colwell's sentence. [Declaration of J. Farmer] at ¶ 9.
>
> 8. When IDOC does a credit audit, they review the OIS conduct screen, OIS time screen and the conduct report of the offender in question to ensure that all logs properly match. *Id.* at ¶ 7. IDOC sentence and computation then also follows up with the offender's current facility to see if there were any appeals filed which might have caused any time action to be removed. *Id.*
>
> 9. Offender Colwell has received multiple disciplinary reports and sanctions for bad behavior while in IDOC. *Id.* at ¶ 6[.]
>
> * * * * *
>
> c. On November 16, 2011, Offender Colwell was found guilty of possession of an electronic device while in custody under disciplinary cause number ISR-11-11-0053 (Ex. A, ¶ 6; Ex. C). For this incident, Offender Colwell was sanctioned with 3 months in disciplinary segregation and a credit class demotion from Credit Class 1 to Credit Class 2. (Ex. A, ¶ 6; Ex. C).

Appellant's Appendix Volume II at 26-28 (citations omitted). Colwell asserts:

> For number paragraph (1), Appellant was never at the "New Castle" prison as Appellee counsel mentions. Par[a]graph (7) Mrs[.] Farmer did not "properly" notice the errors in the prison record. Parargraph [sic] (8), staff did not "ensure all logs properly match." Paragraph (9).c, Appellant was never "demoted from credit class I to credit class II."

Appellant's Brief at 7. He argues "Appellee counsel has failed to make any 'prima facie' case that would lead a court in good discretion to grant Appellees' summary disposition against the strong 'material facts in dispute' that Appellant

holds" and requests this Court to "remand this matter to the Madison County Superior court for a prompt 'evidentiary hearing' according to law." *Id.*

[10] The DOC, Flake, and the DOC Disciplinary Board assert that Colwell does not include a statement of the standard of review and it is "not clear what he believes his motion to be." Appellee's Brief at 8. They assert that a contention that service of the sentence should be affected by giving credit time is treated as a petition for post-conviction relief. They contend Colwell points to four matters on which he claims that there are disputed facts and he is wrong as to each. Specifically, they assert that the statement in their Response that Colwell was at the New Castle Correctional Facility was a scrivener's error and not material. They argue that Colwell's claims that Farmer did not properly notice the errors and that staff did not ensure all logs properly matched were conclusions and not material facts. With respect to Colwell's assertion that he was never demoted from class I to class II, they assert the official record indicates that there was a demotion. They also contend that the enforcement of prison disciplinary sanctions related to an incarcerated individual within the jurisdiction of the DOC is not subject to judicial review.

[11] We have treated a claim that service of a sentence should be affected by giving a petitioner credit time as a petition for post-conviction relief. *See Diaz v. State*, 753 N.E.2d 724, 727 (Ind. Ct. App. 2001) ("Although Diaz is not challenging his conviction or sentence as provided for in the Rules of Procedure for Post-Conviction Remedies, he is contending that service of his sentence should be affected by giving him credit time. We have treated such a claim as a petition

for post-conviction relief. *See Moshenek v. Anderson*, 718 N.E.2d 811, 812 (Ind. Ct. App. 1999)."), *trans. denied*. Generally, the petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004); Ind. Post-Conviction Rule 1(5). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. *Fisher*, 810 N.E.2d at 679. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. *Id.*

[12] With respect to Colwell's argument that the court erred in denying his motion without a hearing, an appellate court reviews the grant of a motion for summary disposition in post-conviction proceedings on appeal in the same way as a motion for summary judgment. *Norris v. State*, 896 N.E.2d 1149, 1151 (Ind. 2008). Thus, summary disposition, like summary judgment, is a matter for appellate de novo determination when the determinative issue is a matter of law, not fact. *Id.*

[13] Ind. Post-Conviction Rule 1(4)(g) provides:

> The court may grant a motion by either party for summary disposition of the petition when it appears from the pleadings, depositions, answers to interrogatories, admissions, stipulations of fact, and any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. . . . If an issue of material fact is raised, then the court shall hold an evidentiary hearing as soon as reasonably possible.

[14] To the extent Colwell asserts that he was never at the New Castle facility, we cannot say he has developed a cogent argument as to how that assertion, which the Appellees contend is a scrivener's error, impacts the analysis or creates a genuine issue of material fact. With respect to Colwell's assertions that Farmer "did not 'properly' notice the errors in the prison record" as asserted in paragraph 7 of the December 16, 2022 Response or that "staff did not 'ensure all logs properly match'" as asserted in paragraph 8, we note that he does not cite to the record after these statements and we cannot say he has presented a cogent argument. Appellant's Brief at 7. As for his assertion that he was never demoted from class I to class II, the State points to a Report of Disciplinary Hearing which lists cause number ISR-11-11-0053 and includes a checked box next to the phrase "Disciplinary segregation, specifically 3 months (Susp)" as well as a checked box next to the phrase "Recommended credit class (CC) change . . . demote . . . 1 to CC 2." Appellant's Appendix Volume II at 32. Further, to the extent Colwell challenges the result of a prison disciplinary action, the Indiana Supreme Court has observed that "it is now 'settled law' that 'enforcement of prison disciplinary sanctions are not subject to judicial review.'" *Higgason v. Ind. Dep't of Corr.*, 883 N.E.2d 812, 814 (Ind. 2008) (quoting *Israel v. Ind. Dep't of Corr.*, 868 N.E.2d 1123, 1124 (Ind. 2007) (Rucker, J., concurring) (citing *Blanck v. Ind. Dep't of Corr.*, 829 N.E.2d 505, 510 (Ind. 2005))). *See also Blanck*, 829 N.E.2d at 507 (holding that the complaint should have been dismissed for lack of subject matter jurisdiction and that "none of the provisions relied upon by the Court of Appeals confer subject matter jurisdiction over claims challenging judicial review of prison disciplinary

decisions"); *State v. Moore*, 909 N.E.2d 1053, 1056 (Ind. Ct. App. 2009) (observing that the Indiana Supreme Court "has repeatedly held that Indiana courts have no subject matter jurisdiction to review prison disciplinary actions") (citing *Blanck*, 829 N.E.2d at 507, and cases cited therein), *reh'g denied*, *trans. denied*. "Indiana courts have held that other types of DOC actions may be reviewed by our courts." *Moore*, 909 N.E.2d at 1056 (citing *Ratliff v. Cohn*, 693 N.E.2d 530 (Ind. 1998) (holding that a juvenile may seek declaratory and injunctive relief on the basis that her incarceration with adult offenders violated the Indiana Constitution), *reh'g denied*; *Kimrey v. Donahue*, 861 N.E.2d 379, 382 (Ind. Ct. App. 2007) (observing that a trial court has jurisdiction when an allegation is made that constitutional rights are being violated by DOC), *trans. denied*). Colwell does not allege a violation of any constitutional right or cite any statute. Rather, to the extent he disagrees with the outcome of the prison disciplinary proceedings which deprived him of credit time or failed to restore certain credit time, such claims address an administrative responsibility of the DOC. *See Campbell v. State*, 714 N.E.2d 678, 683-684 (Ind. Ct. App. 1999) (holding that "the deprivation or restoration of a person's credit time is a discretionary matter entrusted not to the courts but to the administrators of the DOC" and that "granting or denying credit time is an administrative responsibility of the DOC"), *reh'g denied*, *overruled on other grounds by Robinson v. State*, 805 N.E.2d 783, 791 (Ind. 2004); *see also Blanck*, 829 N.E.2d at 510-511; *Kimrey*, 861 N.E.2d at 383 ("We garner from the *Blanck* decision that trial courts lack subject matter jurisdiction over such complaints unless an *explicit* private right of action is afforded by statute or an allegation is made that

constitutional rights are being violated.") (Emphasis added). We cannot say that reversal is warranted.

[15] For the foregoing reasons, we affirm the trial court.

[16] Affirmed.

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