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IN THE
COURT OF APPEALS OF INDIANA

Jeffery Gene Garrison,
Appellant-Petitioner,

v.

Mark Sevier and
State of Indiana,
Appellees-Respondents.

March 16, 2021

Court of Appeals Case No.
20A-MI-1087

Appeal from the Henry Circuit
Court

The Honorable Kit C. Dean Crane,
Judge

Trial Court Cause No.
33C02-2001-MI-9

Weissmann, Judge.

[1] Today we are asked to determine if Jeffery Gene Garrison is entitled to immediate release from prison because the Indiana Parole Board purportedly erred in revoking his parole. Parole appeals are uncommon, although probation revocation challenges are not. Garrison confuses these two concepts, leading to his erroneous conclusion that the time credits he earned in prison prompted his early completion of his 40-year sentence and prevented the State from placing him on parole. As we find Garrison's claims are meritless or waived, we affirm the trial court's denial of his request for immediate release.

Facts

[2] Garrison's parole began in 2014 – 14 years after he began serving his original 40-year sentence for child molesting. The Parole Board revoked Garrison's parole in 2019 because Garrison engaged in a romantic relationship without the permission of his parole officer. The relationship prompted concern because Garrison's girlfriend lived with a teenaged boy and Garrison, a convicted child molester, admitted having telephone contact with the child.

[3] Garrison filed a petition for writ of habeas corpus alleging the State illegally placed him on parole and deprived him of credit time, all in violation of his right to due process. Garrison also alleged various constitutional violations arising from the Parole Board's imposition of a parole condition prohibiting unapproved romantic relationships and from revocation of his parole for violating that condition. The State filed a motion for summary disposition which the trial court granted, denying all of Garrison's claims.

Discussion and Decision

[4] On appeal, Garrison raises three claims. First, he attacks the trial court's failure to hold an evidentiary hearing before dismissing his petition. Second, Garrison alleges he never should have been placed on parole because, based on his calculation of his days in prison plus his earned credits, he already had served his entire sentence. Third, Garrison challenges the parole revocation, arguing his parole officer could not dictate whom he dated. We conclude Garrison's claims either have no merit or have been waived.

I. Overview of Probation and Parole

[5] Garrison's claims overall appear to confuse the rules of probation with the rules of parole. Both parole and probation allow a convicted offender the grace to serve part of his sentence in society, free to go about his business subject only to the restrictions imposed by the Parole Board (for the parolee) or the trial court (for the probationer). Probation and parole both aim to reduce the costs of incarceration and ensure offenders return to society as law-abiding citizens. But even with a shared goal, probation and parole are cousins, not twins, because their ancestries differ.

[6] Probation is a judicial branch function, arising from the trial court's need to supervise offenders with suspended sentences. Upon release from incarceration for either a misdemeanor or felony sentence partially suspended to probation, an offender is supervised by the court's probation department. If a probationer does not comply with the terms of probation, the probationer faces sanctions.

Ind. Code § 35-38-2-3(h). Among those possible sanctions are a return to prison for the portion of the probationer's executed sentence suspended at the original sentencing. I.C. § 35-38-2-3(h)(3).

[7] But not all offenders leave confinement with suspended time hanging over their heads. That is when the executive branch of state government takes over with parole. Parole applies to felony sentences, not misdemeanors. Ind. Code §§ 11-13-3-2(b)(4). A felony offender released from the Department of Correction before completing the offender's entire sentence usually will serve parole or probation but very rarely neither or both. Ind. Code § 35-50-6-1(a)(2), -(a)(3), -(g). Where the felony sentence does not involve probation and the offender has not served day-for-day in prison the entire sentence imposed by the trial court, the Indiana Parole Board releases the felon to parole for a period set by statute ranging from days to life. *See* I.C. § 35-50-6-1. A violation of parole can force the offender to return to prison to serve all or part of those days of his original sentence not already served in prison. I.C. § 35-50-6-1(c). Earned credit time does not reduce a parolee's sentence for purposes of parole. *See* I.C. § 35-50-6-1(a), -(b).

[8] Although parolees' sentences are not reduced for credit time, probationers receive this benefit. If probation is revoked for bad behavior after a probationer's release from his initial incarceration, the maximum sanction is imprisonment for the suspended portion of the offender's original sentence. I.C. § 35-38-2-3(h), -(j). That means the probationer who returns to prison has

the benefit of all credits from his pre-revocation incarceration, unlike the parolee. *See id.*; I.C. § 35-50-6-1(a), -(b).¹

[9] That is the scenario in which Jeffery Gene Garrison found himself. He was convicted of child molesting and served 14 years of his 40-year sentence before being released on parole. His early release was the result of time credits he had earned in prison. Applying those credits, Garrison, by his calculations, had served his entire 40-year sentence. After the Parole Board revoked his parole and returned him to prison for his admitted parole violation, Garrison filed a petition for writ of habeas corpus. He claimed he should not have been placed on parole or returned to prison for violating the terms of that parole because he'd already served his entire sentence. The trial court granted the State's motion for summary disposition and dismissed Garrison's petition.

II. Standard of Review

[10] Whether Garrison's petition is for postconviction relief or for a writ of habeas corpus, we employ the same standard of review because the underlying facts are not in dispute. The parties merely disagree: 1) whether Garrison legally was placed on parole and therefore subject to parole revocation and resulting reincarceration and 2) whether Garrison could be returned to prison based on

¹ The probation and parole statutes do not reveal the rationale for this disparity, and Garrison does not challenge it specifically. He simply treats his time credits as a parolee as they would be handled if he were a probationer. We presume the legislature knows the existing statutes when it adopts other statutes and "to have meant what it said." *State v. Whitney*, 889 N.E.2d 823, 827 (Ind. Ct. App. 2008); *Jack Gray Transport, Inc. v. Department of State Revenue*, 744 N.E.2d 1071, 1077 (Ind. Tax Ct. 1998).

his admitted violation of a parole condition prohibiting his unapproved romantic relationship. As these issues are pure questions of law not requiring consideration of extrinsic evidence, inferences drawn from that evidence, or witness credibility, we review them *de novo*. *Hale v. Butts*, 88 N.E.3d 211, 214 (Ind. Ct. App. 2017).

III. Summary Disposition

[11] Garrison first complains that the court treated his petition as a request for postconviction relief as opposed to a petition for writ of habeas corpus. His theory is that his writ required an evidentiary hearing whereas a petition for postconviction relief does not. Garrison is wrong. Evidentiary hearings are not required in either scenario. Ind. Post-conviction Rule 1 § 4(g) (allowing summary disposition of petitions for postconviction relief when the pleadings and other written submissions show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law); *Pallet v. State*, 901 N.E.2d 611, 613 (Ind. Ct. App. 2009) (rejecting argument that evidentiary hearing on petition for writ of habeas corpus is required). Because no evidentiary hearing was required, we find no error in the court's summary disposition of Garrison's petition.

IV. Placement on Parole

[12] Garrison argues he should not have been placed on parole because with credit time, he fully satisfied his 40-year sentence before his parole began. He asserts his placement on parole effectively denied him 24 years of earned good time

credit. *See generally* Ind. Code § 35-50-6-0.5 (“‘Good time credit’ means a reduction in a person’s term of imprisonment or confinement awarded for the person’s good behavior while imprisoned or confined.”). According to Garrison, such a deprivation without notice or hearing violated his right to due process under the Fourteenth Amendment to the United States Constitution.

[13] Garrison erroneously assumes his earned credit time prevents his placement on parole. It does not. Credit time is a statutory reward for good behavior and is earned by felons toward release on parole, not toward reduction of the felon’s fixed term of imprisonment or date of discharge from the felon’s sentence. *Boyd v. Broglin*, 519 N.E.2d 541, 542 (Ind. 1988). In other words, credit time operates to advance a defendant’s release date from prison but does not reduce the parolee’s overall length of sentence. *Miller v. Walker*, 655 N.E.2d 47, 48 n.3 (Ind. 1995).

[14] At the time of his original release, Garrison had not served, day-for-day, his entire 40-year sentence, and that remains true today. His placement on parole upon his release in 2014 was mandatory because his original sentence was not suspended to probation and no other statutory exception to parole existed. *See* I.C. § 35-50-6-1.

[15] The nature of Garrison’s conviction dictated the length of his parole. Because he had been convicted of child molesting, Garrison was a “sex offender” under Indiana Code § 11-8-8-4.5(a)(3), and could be placed on parole for up to 10 years. I.C. § 35-50-6-1(d). A defendant on parole remains on parole until his

statutory parole time ends or until the defendant serves, day-for-day, his entire sentence without applying credit time. I.C. § 35-50-6-1(b); Ind. Code § 11-13-3-5(a)(2) (“A person released on parole from a determinative term of imprisonment remains on parole until the determinative term expires, except that the parole board may discharge the person from that term any time after that person’s release on parole”). Absent Garrison’s parole revocation, he would have been discharged from parole no later than 2024 –that is, within 10 years after his release in 2014, as required by Indiana Code §§ 11-13-3-5(a)(2) and 35-50-6-1(d).

[16] When the Parole Board revoked his parole, Garrison had served less than five years of parole and had not yet been discharged. As a result, the Board had continuing authority to revoke Garrison’s parole based on a parole violation and to return him to prison to serve the remainder of his 40-year fixed sentence. I.C. § 35-50-6-1(c). Upon revocation of his parole, Garrison could be forced to serve in prison the credit time he received which had triggered his early release from prison and placement on parole. *See* I.C. § 35-50-6-1(c) (an offender “whose parole is revoked shall be imprisoned for all or part of the remainder of the person’s fixed term”).

[17] Garrison’s placement on parole was proper and did not deprive him of his earned credit time. *See Boyd*, 519 N.E.2d at 543 (stating prisoner is not deprived of earned credit time when placed on parole). Garrison already had received the benefit of those credits when he was released early and allowed the grace to serve some of his sentence outside of prison walls. *See Overlade v. Wells*, 234 Ind.

436, 127 N.E.2d 686, 690 (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.”).²

V. Parole Revocation

[18] Garrison next contends the Parole Board illegally prohibited his involvement in romantic relationships unapproved by his parole officer. According to Garrison, such a condition was improper because, among other things, it unduly restricted his fundamental right of free association under the First Amendment and he was not given adequate notice of it. *See* Ind. Code 11-13-3-4 (authorizing Parole Board to impose conditions on parolees if “reasonably related to the parolee’s successful reintegration into the community and not unduly restrictive of a fundamental right”). Garrison further claims the Parole Board could not revoke his parole based on a violation of an unconstitutional parole rule. In his reply brief, Garrison also appears to challenge the sufficiency of the evidence supporting the Parole Board’s revocation of his parole.

² Garrison also challenges whether he is a “sexually violent predator” under Indiana Code § 35-38-1-7.5 and, therefore, whether he is on lifetime parole under Indiana Code § 35-50-6-1. Garrison did not raise that issue in his petition for writ of habeas corpus. The State asserted in its motion for summary disposition that Garrison was a “sexually violent predator” on parole for life, and Garrison responded that he was not. On appeal, the State continues to assert Garrison is a sexually violent predator. However, the State concedes it relied on the wrong statute at the trial court level and that Garrison was paroled for ten years and not for life. As Garrison did not raise the “sexually violent predator” issue in his petition for writ of habeas corpus and he is appealing the trial court’s summary disposition of his claims in that petition, that issue is not before us for review.

- [19] Garrison cripples our ability to review these issues through his failure to present us with an adequate record. He presents neither the parole condition he was accused of violating nor adequate evidence to determine if he objected to the condition during the revocation process or appealed the revocation to the Parole Board.
- [20] Based on this sparse record, we cannot even tell if he pled guilty to the accusation. The documents show alternatively that he pled guilty and that he did not. For instance, the “Waiver of Preliminary Hearing” reflects a plea. App. Vol. II p. 38. The Parole Board’s decision curiously indicates both that Garrison pled guilty to the parole violation and that he did not. App. Vol. II p. 86. The State’s position was inconsistent. App. Vol. II pp. 33, 107.
- [21] Garrison’s petition for writ of habeas corpus concedes he continued the unapproved relationship, although Garrison suggests such conduct did not violate the terms of his parole. App. Vol. II pp. 15-16. Garrison has not suggested, nor does the record show, that he challenged during the parole revocation proceedings the validity of the parole condition restricting his personal relationships. He also fails to provide any transcript of those proceedings—an act which significantly hampers our ability to review his challenge to the parole revocation.
- [22] Through these various omissions, Garrison has waived his challenge to the parole condition. *See Robinette v. State*, 641 N.E.2d 1286, 1288 (Ind. Ct. App. 1994) (finding probationer waived claimed invalidity of probation condition by

failing to object at the time it was imposed or at the time of probation revocation hearing); Ind. Appellate Rule 46(A)(8) (requiring parties to cite the pertinent facts, provide cogent argument, and support arguments with citations to the record). Further, Garrison has waived any claim that insufficient evidence supports his parole revocation by raising that issue on appeal only in his reply brief. *See Jones v. State*, 22 N.E.3d 877, 881 (Ind. Ct. App. 2014) (appellant may not raise issue for first time in reply brief).

[23] As Garrison has failed to establish any error preserved for appeal or capable of review with the present record, we affirm the trial court's judgment.

Mathias, J., and Altice, J., concur.