

MEMORANDUM DECISION

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APPELLANT PRO SE

Gregory A. Caudle
Carlisle, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

David A. Arthur
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Gregory A. Caudle,
Appellant-Plaintiff,

v.

Frank Vanihel, *et al.*,
Appellees-Defendants.

June 12, 2023

Court of Appeals Case No.
22A-MI-3115

Appeal from the Sullivan Circuit
Court

The Honorable Robert E. Hunley
II, Judge

Trial Court Cause No.
77C01-2207-MI-332

Memorandum Decision by Judge Tavitias
Judges Vaidik and Foley concur.

Tavitias, Judge.

Case Summary

- [1] Gregory Caudle, who has previously sought post-conviction relief, filed a petition for habeas corpus, which included a notice of tort claim. The trial court treated Caudle's habeas petition as a successive petition for post-conviction relief, for which Caudle had not requested leave, and found that Caudle's notice of tort claim was improperly filed. The trial court, accordingly, dismissed the habeas petition and notice of tort claim.
- [2] Caudle appeals and argues that the trial court erred by: (1) treating his habeas petition as a successive petition for post-conviction relief, for which Caudle had not requested leave, and dismissing the petition; and (2) dismissing his notice of tort claim. We find that: (1) the trial court abused its discretion by treating Caudle's habeas petition as a successive petition for post-conviction relief, for which Caudle had not requested leave, and dismissing the petition; and (2) Caudle's challenge to the trial court's dismissal of his notice of tort claim is waived. Accordingly, we affirm in part, reverse in part, and remand with instructions that the trial court rule on Caudle's habeas petition.

Issues

- [3] Caudle raises several issues on appeal, and the State raises another. We consolidate and restate the issues in this case as:
- I. Whether the trial court abused its discretion by treating Caudle's habeas petition as a successive petition for post-conviction relief, for which Caudle had not requested leave, and dismissing the petition.

- II. Whether Caudle’s challenge to the trial court’s dismissal of his notice of tort claim is waived.

Facts

- [4] On March 12, 1999, in Cause No. 49G03-9708-CF-124368 (“Cause No. 368”), Caudle pleaded guilty to and was convicted of burglary, a Class B felony, and admitted to being an habitual offender. Caudle was sentenced to sixteen years, which included a ten-year habitual offender enhancement, in the Department of Correction. According to Caudle, he was paroled in November 2005.
- [5] On July 7, 2006, in Cause No. 49G06-0511-FB-200878 (“Cause No. 878”), Caudle pleaded guilty to and was convicted of burglary, a Class B felony; theft/receiving stolen property, a Class D felony; and admitted to being an habitual offender. Caudle was sentenced to a concurrent sentence totaling twenty years, which included a ten-year habitual offender enhancement. According to Caudle, his parole in Cause No. 368 was revoked, and he was ordered to serve the sentence in Cause No. 878 consecutively to the sentence in Cause No. 368.
- [6] Caudle filed for post-conviction relief in Cause No. 878, and the post-conviction court modified the habitual offender enhancement portion of Caudle’s sentence in that case so as to be concurrent with the habitual offender enhancement portion of Caudle’s sentence in Cause No. 368.
- [7] On July 17, 2013, in Cause No. 49G03-1305-FB-030738 (“Cause No. 738”), a jury found Caudle guilty of burglary, a Class B felony, and resisting law enforcement, a Class A misdemeanor. The trial court held a bifurcated bench

trial and found Caudle to be an habitual offender. The trial court sentenced Caudle to concurrent sentences totaling thirty-eight years, which included a twenty-year habitual offender enhancement. Caudle was ordered to serve this sentence consecutively to his sentence in Cause No. 878. *Id.* at 34.

[8] In March 2016, Caudle filed a petition for post-conviction relief, in which he challenged the trial court’s “jurisdiction” to convict him in Cause No. 738. *See Caudle v. State*, Case No. 18A-PC-2292, 2019 WL 4197188 (Ind. Ct. App. Sep. 5, 2019), *trans denied*. The post-conviction court denied relief. Caudle appealed, and a panel of this Court affirmed the post-conviction court’s order. *Id.*

[9] On July 14, 2022, Caudle filed, in the Sullivan County Circuit Court, a petition entitled “Verified State Habeas Corpus IC 34-25.5-1-1” that named Frank Vanihel, Matt Leohr, Jennifer L. Farmer, and the Indiana Parole Board (“State Defendants”) as defendants. Appellant’s App. Vol. II p. 43. Caudle alleged that his “three aggregate[] sentencing terms [] are believed illegally computed by false procedures” by the DOC and that the DOC officials were “holding him illegally.” *Id.* at 44. Specifically, Caudle alleged that, after accounting for his time served, good time credit, and educational credits, he was “due a discharge from the aggregation of [his] (3) consecutive terms and . . . has been illegally incarcerated beyond his release date.” *Id.* at 46. Caudle clarified that he was not “challeng[ing] [] the validity of [his] (3) convictions or the sentences

thereof” but rather “the execution and process of the Indiana Dep’t. of Corr[ection]’s calculation” of his remaining sentence.¹ *Id.* at 43.

[10] Caudle also filed with his petition a “Notice of Tort Claim,” in which he alleged that he was entitled to damages for his allegedly illegal incarceration. *Id.* at 56. On August 26, 2022, the State filed a motion to dismiss Caudle’s habeas petition, and, on September 29, 2022, Caudle filed a response.

[11] On November 4, 2022, the trial court entered an order granting the State’s motion to dismiss. The trial court found that Caudle’s “current commitment is regular on its face and this action is properly considered a petition for post-conviction relief.” *Id.* at 15. The trial court further found that Caudle’s habeas petition was actually “an unauthorized successive petition for post-conviction relief” for which Caudle would need to “first seek leave of the Indiana Court of Appeals.” *Id.* at 16. The trial court also found that Caudle’s notice of tort claim was “improperly filed under this cause n[umber].”² *Id.* at 15. Accordingly, the trial court dismissed Caudle’s habeas petition and notice of tort claim. Caudle now appeals.

¹ Caudle’s habeas petition later repeated that he was “not complaining that [his] sentences are incorrect or erroneous.” Appellant’s App. Vol. II p. 45.

² Caudle filed a motion to correct error, which the trial court denied.

Discussion and Decision³

I. Caudle’s habeas petition was not a mistitled successive petition for post-conviction relief

[12] Caudle argues that the trial court erred by treating his habeas petition as a mistitled successive petition for post-conviction relief for which he had not requested leave.⁴ We review the trial court’s habeas decision for an abuse of discretion. *Manley v. Butts*, 71 N.E.3d 1153, 1156 (Ind. Ct. App. 2017) (citing *Hardley v. State*, 893 N.E.2d 740, 742 (Ind. Ct. App. 2008)), *trans. denied*. A trial court abuses its discretion when its decision is “clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law.” *Abbott v. State*, 183 N.E.3d 1074, 1083 (Ind. 2022). We find that the trial court here abused its discretion.

[13] In determining whether the trial court improperly treated Caudle’s habeas petition as one for post-conviction relief, we must consider our habeas corpus statutes and our post-conviction relief rules. Indiana Code Section 34-25.5-1-1 provides, “[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

³ We note at the outset that Caudle proceeds in this appeal pro se. It is well established that, in Indiana, “[a]n appellant who proceeds pro se is held to the same established rules of procedure that a trained legal counsel is bound to follow and, therefore, must be prepared to accept the consequences of his or her action.” *McCullough v. CitiMortgage, Inc.*, 70 N.E.3d 820, 825 (Ind. 2017).

⁴ The State Defendants urge, as a threshold matter, that Caudle has waived his challenge to the trial court’s dismissal of his habeas petition by failing to make a cogent argument on appeal. While Caudle’s handwritten brief is difficult to decipher, we find that Caudle has sufficiently raised a challenge to the trial court’s dismissal of his habeas petition.

restraint, and shall be delivered from the restraint if the restraint is illegal.” We have held that:

“The purpose of the writ of habeas corpus is to bring the person in custody before the court for inquiry into the cause of restraint.” *Partlow v. Superintendent, Miami Correctional Facility*, 756 N.E.2d 978, 980 (Ind. Ct. App. 2001), *superseded by statute on other grounds as stated in Paul v. State*, 888 N.E.2d 818 (Ind. Ct. App. 2008), *trans. denied*. “One is entitled to habeas corpus only if he is entitled to his immediate release from unlawful custody.” *Id.* (quoting *Hawkins v. Jenkins*, 268 Ind. 137, 139, 374 N.E.2d 496, 498 (1978)). “[A] petitioner may not file a writ of habeas corpus to attack his conviction or sentence.” *Id.*

Manley, 71 N.E.3d at 1156.

[14] Post-conviction relief proceedings, meanwhile, are governed by Post-Conviction Rule 1. As relevant here, Post-Conviction Rule 1, Section 1 provides:

(a) Any person who has been convicted of, or sentenced for, a crime by a court of this state, and who claims:

* * * * *

(5) that his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint[]

* * * * *

may institute at any time a proceeding under this Rule to secure relief.

* * * * *

(c) This Rule does not suspend the writ of habeas corpus, but if a person applies for a writ of habeas corpus in the county where the person is incarcerated and challenges the validity of his conviction or sentence, that court shall transfer the cause to the court in which the conviction took place, and the latter court shall treat it as a petition for relief under this Rule.

[15] Post-Conviction Rule 1, Section 8 limits the availability of post-conviction relief and provides:

All grounds for relief available to a petitioner under this rule must be raised in his original petition. Any ground finally adjudicated on the merits or not so raised and knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the petitioner has taken to secure relief, may not be the basis for a subsequent petition, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original petition.

[16] Not infrequently, incarcerated persons improperly challenge their convictions and/or sentences by seeking habeas relief rather than seeking the only available relief for such challenges—post-conviction relief. *See, e.g., Love v. State*, 52 N.E.3d 937, 940 (Ind. Ct. App. 2016). In such cases where the petitioner “erroneously captions his action as [a] petition for a writ of habeas corpus rather than post-conviction relief, courts will frequently and properly treat the

petition as one for post-conviction relief, based on the content of the petition, rather than the caption.” *Hardley*, 893 N.E.2d at 743 (citing *Partlow*, 756 N.E.2d at 980). For example, in *Love*, we observed:

Along with his petition for *habeas corpus*, Love filed a motion to dismiss his original charges. It is clear that he intended to collaterally attack his original conviction instead of discovering the legal reason for his detainment. . . . In accordance with Post-Conviction Rule 1(1)(c), then, Love’s petition and motion were to be treated as a petition for post-conviction relief.

52 N.E.3d at 940 (internal citation omitted).

[17] In contrast, in *Partlow*, we held that the trial court improperly treated Partlow’s habeas petition as one seeking post-conviction relief when the habeas petition did not “attack[] the validity of [Partlow’s] conviction or sentence” and claimed that, after accounting for educational credits to which Partlow claimed he was entitled, Partlow was “being unlawfully restrained past the expiration of his sentence and therefore deserve[d] immediate discharge.” 756 N.E.2d at 981 (citing *Hinkle v. Dowd*, 58 N.E.2d 342, 342 (1944)). Thus, when a habeas petition alleges that the petitioner is entitled to immediate discharge and does not challenge the petitioner’s conviction and/or sentence, the trial court should not treat the petition as one for post-conviction relief.

[18] Here, the trial court treated Caudle’s habeas petition as a petition for post-conviction relief and dismissed the petition because Caudle had previously filed a petition for post-conviction relief and had not requested leave from this Court

to file a successive petition. We are unable, however, to discern the basis on which the trial court found that Caudle's habeas petition was actually a petition for post-conviction relief.

[19] Caudle's habeas petition alleges that, after accounting for his time served, good time credit, and educational credits, his sentence has expired, and he is entitled to immediate discharge. As in *Partlow*, Caudle does not challenge his convictions and/or sentences.

[20] The State Defendants argue that Caudle's habeas petition is actually a petition for post-conviction relief because "[i]ssues concerning good time and other sentence credits are properly raised by post-conviction petition." Appellee's Br. p. 14. The State Defendants are correct, however, issues concerning credit time may **also** be raised in habeas petitions when accounting for such credits would entitle the petitioner to immediate discharge. See *Partlow*, 756 N.E.2d at 981. For example, in *Mills v. State*, Mills filed a habeas petition that alleged his parole had expired. 840 N.E.2d 354, 355, 357 (Ind. Ct. App. 2006). Much like Caudle, Mills "alleged that he was entitled to immediate release and specifically stated that he was not 'attacking the validity of the conviction or sentence' under Ind. Post Conviction Rule 1, § 1(c)." *Id.* (citation omitted). The trial court treated Mills's petition as one seeking post-conviction relief, and we observed:

Because Mills alleged that he was entitled to immediate release, it appears that the habeas corpus statutes are applicable. However, because Mills alleges that his parole was unlawfully revoked, it

appears that he could have **also** filed for relief under the post-conviction rules. *See State v. Jeffers*, 168 Ind. App. 284, 287, 342 N.E.2d 681, 683 (1976) (holding that “PCR 1 does not replace the traditional remedy of habeas corpus as a method of challenging a defendant’s unlawful incarceration” and finding “no authority for the proposition that the post-conviction rules may not supply an alternative or additional remedy where a parole has been unlawfully revoked”).

Id. at 357 (emphasis added)⁵; *cf. Samuels v. State*, 849 N.E.2d 689, 691 (Ind. Ct. App. 2006) (“Had Samuels contended in his petition for post-conviction relief that his educational credit time would have entitled him to immediate release from incarceration, his case would have fallen under Post-Conviction Rule 1(1)(a)(5), the subsection that is an **alternative** to the right of habeas corpus.” (citing *Mills*, 840 N.E.2d at 357) (emphasis added)), *trans. denied*.

[21] We note that the Indiana Supreme Court held in *Young v. State* that “post-conviction proceedings are the appropriate procedure for considering properly presented claims for educational credit time.” 888 N.E.2d 1255, 1257 (Ind. 2008). *Young*, however, was not a case where, as here, the petitioner filed a habeas petition, and the trial court treated the petition as one for post-conviction relief. Indeed, *Young* did not claim to be entitled to immediate release, so a habeas petition would not have been appropriate. Furthermore, *Young* relied on this Court’s decision in *McGee v. State*, which, in turn, cited

⁵ We did not reverse in *Mills* but rather reached the merits (and ultimately affirmed) because “neither party claim[ed] that the trial court erred by treating *Mills*’s writ of habeas corpus as a petition for post-conviction relief.” 840 N.E.2d at 357-58.

Partlow's holding that "a habeas proceeding [is] the appropriate action" when the defendant claims that, after accounting for educational credits, the defendant is entitled to immediate discharge. 790 N.E.2d 1067, 1069 (Ind. Ct. App. 2003), *trans. denied*. Accordingly, we find that the Indiana Supreme Court did not foreclose an incarcerated person who claims to be entitled to immediate discharge based on their credit time from seeking habeas relief as an alternative to post-conviction relief.

[22] The State Defendants also argue that "[w]hen a prisoner is being held in a state prison, under a commitment, regular on its face, **habeas corpus** will not lie and the petition for the writ should be dismissed." Appellee's Br. p. 12 (citing *Harris v. Duckworth*, 507 N.E.2d 1382, 1382 (Ind. 1987)) (emphasis added). The State Defendants correctly state the law but misapply it; the trial court did not consider Caudle's petition as one for habeas relief but, instead, treated the petition as one seeking post-conviction relief.

[23] The State Defendants further argue that we must remand if we agree with Caudle that his habeas petition was improperly dismissed as an unauthorized petition for post-conviction relief. We agree. Because the trial court dismissed Caudle's habeas petition without reaching the merits, we will not review the merits here. *Cf. Ellis v. State*, 58 N.E.3d 938, 941 (Ind. Ct. App. 2016) (remanding petition for credit time to trial court to determine whether petitioner exhausted his administrative remedies and, if so, to "address the merits of [petitioner's] request"), *trans. denied; but see Partlow*, 756 N.E.2d at 982 (deciding

the merits of the habeas petition with no mention of whether the defendant argued remand was the proper remedy).

[24] Based on the foregoing, we conclude that the trial court abused its discretion by treating Caudle’s habeas petition as a successive petition for post-conviction relief. Because Caudle claims to be entitled to immediate discharge and does not challenge his convictions and/or sentences, Indiana law does not preclude him from seeking habeas relief in lieu of post-conviction relief and its accompanying restraints.⁶ Furthermore, because the trial court dismissed Caudle’s habeas petition without reaching the merits, we agree with the State Defendants that we must remand to the trial court to determine whether Caudle is entitled to habeas relief.

II. Caudle’s challenge to the trial court’s dismissal of his notice of tort claim is waived

[25] Caudle also argues that the trial court erred by dismissing his notice of tort claim against the State Defendants. The trial court found that this notice was “improperly filed” Appellant’s App. Vol. II p. 15.

[26] At the time Caudle filed his notice of tort claim, the Indiana Tort Claims Act, Indiana Code Section 34-13-3-8(a), provided:

⁶ Caudle argues that the trial court erred by failing to transfer Caudle’s habeas petition to the convicting court pursuant to Post-Conviction Rule 1, Section 1(c). That section only applies when the so-called “habeas” petition “challenges the validity of [the petitioner’s] conviction or sentence.” *Id.* Because Caudle’s habeas petition does not challenge his conviction or sentence, the trial court did not err by failing to transfer the petition.

Except as provided in section 9 of this chapter, a claim against a political subdivision is barred unless notice is filed with:

(1) the governing body of that political subdivision; and

(2) the Indiana political subdivision risk management commission created under IC 27-1-29;

within one hundred eighty (180) days after the loss occurs.

[27] Caudle recognizes that the 180-day statute of limitations applies to his notice of tort claim; however, Caudle fails to argue that he filed his notice of tort claim within that time frame or otherwise met the requirements of Indiana Code Section 34-13-3-8(a) by filing the notice with the proper authorities rather than the trial court. Accordingly, we find that Caudle’s challenge to the trial court’s dismissal of his notice of tort claim is waived. *See* Ind. App. R. 46(A)(8)(a) (requiring that arguments on appeal “contain the contentions of the appellant on the issues presented, supported by cogent reasoning” and “citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on”).

Conclusion

[28] The trial court abused its discretion by treating Caudle’s habeas petition as a successive petition for post-conviction relief, for which Caudle had not requested leave, and dismissing the petition; and Caudle’s challenge to the trial court’s dismissal of his notice of tort claim is waived. Accordingly, we affirm in

part, reverse in part, and remand with instructions that the trial court rule on Caudle's habeas petition.

[29] Affirmed in part, reversed in part, and remanded.

Vaidik, J., and Foley, J., concur.