

### **VERIFIED PETITION FOR CREDIT TIME**

The Defendant, by counsel, respectfully requests this Court to order the Indiana Department of Corrections to grant the Defendant additional educational credit. In support of the Petition, the Defendant states the following:

1. The Defendant has been incarcerated in the Department of Corrections at [insert facility] since his conviction and sentencing in this Court on [insert date].
2. On [insert date], the Defendant earned [insert degrees or certificate for completion of a class]. *See copy of degree/certificate herein incorporated and referenced as Exhibit A.*
3. On [insert date], the DOC denied the Defendant credit time for the degree. *See copy of denial herein incorporated and referenced as Exhibit B.*
4. On [insert date], the Defendant filed a Grievance challenging the denial of his credit time, which the DOC denied on [insert date]. *See copies of Grievance and DOC denial herein incorporated and referenced as Exhibits C and D, respectively.*
5. On [insert date], the Defendant appealed the denial of his Grievance which the DOC denied on [insert date]. *See copies of Appeal and DOC denial herein incorporated and referenced as Exhibits E and F, respectively.*
6. An inmate earns the right to credit time under the education credit statute, I.C. 35-50-6-3.3(a), when the inmate successfully completes the requirements for a degree as long as the inmate has, until that point, demonstrated a pattern consistent with rehabilitation. Rogers v. State, 705 N.E.2d 1039 (Ind.Ct.App. 1999).
7. The DOC's denial of the education credit time violates I.C. 35-50-6-3.3 and [insert any applicable constitutional provision].
8. The Defendant has exhausted the DOC administrative remedies in an attempt to obtain credit time. Thus, this Court now has jurisdiction to order the DOC to award the Defendant the credit time he deserves. Young v. State, 888 N.E.2d 1255 (Ind. 2008) (in

order for a trial court to have jurisdiction over a petition for education credit time, the petitioner must present all evidence of his diploma and credentials of the school that awarded it, that he meets each requirement of any necessary statute and that he exhausted the DOC grievance procedures along with evidence of the DOC grievance procedures; the petitioner must also comply with the post-conviction rules).

WHEREFORE, the Defendant respectfully requests this Court to order the Indiana Department of Corrections to grant the Defendant additional educational, and for all other relief just and proper in the premises.

(Signature)

VERIFICATION

I, [insert name of Defendant], being duly sworn upon my oath, depose and say that I have subscribed to the foregoing petition, that I know the petition's contents, that it includes every ground known to me for vacating, setting aside, or correcting the conviction and sentence attacked by this petition, and that the matters and allegations set forth in this petition are true.

\_\_\_\_\_  
Signature of Defendant

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Printed Name:  
Notary Public

Residing in \_\_\_\_\_ County  
My commission expires: \_\_\_\_\_

## NOTE

A Petition for Credit Time will be treated as a Petition for Post-conviction Relief. Young v. State, 888 N.E.2d 1255 (Ind. 2008). Thus, if the Defendant has not previously filed a Petition for Post-conviction Relief, the Defendant must either raise all viable claims or be prepared to comply with Indiana Rules of Procedure for Post-conviction Relief, Rule 1, Section 12. If the Defendant has previously filed a Petition for Post-conviction Relief, the Defendant must either amend the Petition to include the credit time issue or ask for permission to file a successive petition under Rule PC1, § 12.

## CASE LAW

Burks-Bey v. State, 903 N.E.2d 1041 (Ind.Ct.App. 2009) (trial court must determine that defendant has failed to exhaust administrative remedies before dismissing case for lack of subject matter jurisdiction).

Murphy v. State, 930 N.E.2d 630 (Ind.Ct.App. 2010) (where a defendant earns a GED while incarcerated prior to sentencing, trial court is the appropriate authority to determine whether to grant credit time).

Robinson v. State, 18 N.E.3d 1026 (Ind.Ct.App. 2014) (where the trial court revoked defendant's community corrections placement, the trial court in consultation with the Marion County Community Corrections was in the better position to determine whether defendant was entitled to the educational credit time defendant sought for an educational achievement, a general education development diploma, earned while serving his sentence on home detention).

Paul v. State, 888 N.E.2d 818 (Ind.Ct.App. 2008) (DOC's retroactive application of its policy denying educational time credit for second associate's degrees violated the Defendant's constitutional protections against ex post facto laws).

Hawkins v. State, 973 N.E.2d 619 (Ind. Ct. App. 2012) (inmate did not show that he was entitled to relief from the trial court's denial of the inmate's petition for IC 35-50-6-3.3 educational credit time in a case where the General Assembly's amendment of a governing statute, IC 21-12-3-13, meant that the inmate would be kept from pursuing a community college degree that the inmate had already completed halfway due to the State's funding concerns and the inmate's conviction for dealing in cocaine, a Class A felony, in violation of IC 35-48-4-1. The amendment did not violate the inmate's right to be free from ex post facto laws under Ind. Const., art. 1, § 24 because it operated prospectively only and did not increase the inmate's sentence, and it did not violate the inmate's right to equal privileges under Ind. Const., art. 1, § 23 since the State and the community college were balancing inmate rehabilitation through education against the loss of funding).

McGee v. State, 790 N.E.2d 1067 (Ind.Ct.App. 2003) (there is no basis in either language of I.C. 35-50-6-3.3(a)(3)(B) or purpose behind it for DOC's policy of denying credit time for a high school diploma not earned in Indiana, assuming that requirements for earning out-of-state diploma are similar to Indiana's requirements).

Wilson v. State, 799 N.E.2d 51 (Ind.Ct.App. 2003) (fact that a defendant had no disciplinary convictions during time he worked on a degree does not compel a post-conviction court to find the defendant demonstrated a pattern consistent with rehabilitation).

Diaz v. State, 753 N.E.2d 724 (Ind.Ct.App. 2001) (fact that statute requires pattern of behavior consistent with rehabilitation means, at least, that inmate's record must remain free of disciplinary convictions while he was participating in program; trial court properly denied Defendant's petition for post-conviction relief).

in which he asserted he was entitled to education credit time because Defendant committed attempted battery while obtaining GED which showed his behavior was inconsistent with rehabilitation).

Rodgers v. State, 705 N.E.2d 1039 (Ind.Ct.App. 1999) (trial court could not deprive Defendant education credit time based on subsequent probation violations, claiming that his behavior did not demonstrate pattern of conduct consistent with rehabilitation).

Tumbleson v. State, 706 N.E.2d 217 (Ind.Ct.App. 1999) (fact that court states it took into consideration Defendant obtaining GED while incarcerated awaiting trial and sentencing but still sentenced Defendant to maximum sentences was improper; Defendant was entitled to education credit time unless court found pattern of behavior inconsistent with rehabilitation).

Neff v. State, 888 N.E.2d 1249 (Ind. 2008) (when an offender is sentenced and receives credit for time served, earned credit time, or both, that time is applied to the new sentence immediately, before application of prospective earned credit time, in order to determine the defendant's earliest release date).

Renfro v. State, 736 N.E.2d 797 (Ind.Ct.App. 2000) (prior to 1999 amendment, even though Defendant earned his GED one month before his earliest release date, DOC was still required to credit Defendant's sentence with six months; thus, when parole was revoked, defendant was credited with education time), *aff'd on reh'g*, 743 N.E.2d 299 (when determining whether Defendant gets education credit time subtracted from earliest release date or sentence imposed by court, version of I.C. 35-50-6-3.3 that was in effect either at time of conviction or at time defendant earned GED, and not current version, controls).

Indiana DOC v. Bogus, 754 N.E.2d 27 (Ind.Ct.App. 2001) (disagreeing with Renfro, *infra*, because educational credit time is taken from earliest release date, Defendant could not shorten his fixed sentence when he violated parole; thus, when Defendant violated parole, he was not entitled to use remainder of education good time credit earned prior to early release).