

PAUL D. MARTIN,)
Petitioner/Appellant,)
VS.)
DEPARTMENT OF CORRECTION,)
Respondent/Appellee.)

Appeal No.
01-A-01-9606-CH-00254
Davidson Chancery
No. 95-2877-III

FILED

November 27, 1996
Cecil W. Crowson
Appellate Court Clerk

APPEALED FROM THE CHANCERY COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

THE HONORABLE ROBERT S. BRANDT, CHANCELLOR

PAUL D. MARTIN, #153053
Riverbend Maximum Security Instituition
7475 Cockrill Bend Industrial Road
Nashville, Tennessee 37209-1010
Pro Se/Petitioner/Appellant

CHARLES W. BURSON
Attorney General and Reporter

PATRICIA C. KUSSMANN
Assistant Attorney General
404 James Robertson Parkway
Nashville, Tennessee 37243
Attorney for Respondent/Appellee

AFFIRMED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:
TODD, P.J., M.S.
KOCH, J.

O P I N I O N

A prisoner in the custody of the the Department of Correction was accused of assaulting a prison guard. After a hearing, disciplinary sanctions were imposed against the inmate, including a postponement of his release eligibility date. He filed a Petition for Certiorari in the Chancery Court, arguing that he had acted in self-defense, and that irregularities in the hearing procedure were in violation of departmental procedures. The Chancery Court dismissed the petition for untimeliness. We affirm the trial court.

I.

This case arose from an incident that occurred on December 28, 1994. Paul D. Martin, an inmate housed in the Mark H. Luttrell Reception Center, was in the dining hall and became involved in a verbal altercation with a prison guard. He was charged with the disciplinary offense of threatening an officer. While the guard who was allegedly threatened was placing the prisoner in segregation, blows were exchanged between them. Both men were seen by the medical staff, the guard for an injury to his right hand and a cut to his nose, and the prisoner for injuries to the face.

Disciplinary hearings were held on January 6 and 9, 1995. Though the inmate claimed that the officer instigated the encounter and struck the first blow, the hearings resulted in findings of guilt against the prisoner on the two charges of threatening an employee and assaulting an employee. The affidavits of inmates who had witnessed the encounter between Mr. Martin and the officer were submitted, but the inmate witnesses were not permitted to testify at the hearing.

The disciplinary board recommended that Mr. Martin be placed in involuntary administrative segregation. Mr. Martin filed two appeals of the disciplinary board's rulings on January 18 and January 20th, respectively. Both appeals were rejected by the Associate Warden.

On April 8, 1995, Mr. Martin received a "Tomis Offender Sentence Letter." This computer-generated document contained a "Summary of Current Release Data" which indicated that Mr. Martin would not be eligible for parole until January 21, 2010. An earlier Tomis Offender Sentence Letter had indicated a release eligibility date of January 4, 2002.

On May 24, 1995, Mr. Martin was notified that his release eligibility date had been extended by 30%. This was apparently in accordance with Department of Correction Policy No. 502.02(VI)(E) which reads in pertinent part:

In all cases in which an inmate is found guilty of a disciplinary offense that resulted in physical injury to an employee, volunteer or visitor, in addition to any other punishment imposed, the offender's parole or release eligibility date shall be extended by adding thereto an additional thirty percent (30%) of the offender's original maximum sentence

Elsewhere in Policy 502.02, physical injury is defined as "[a] cut, abrasion, bruise, burn or disfigurement; physical pain or temporary illness or impairment of a bodily member, organ, or mental faculty."

Mr. Martin wrote to the Department, requesting it to issue a declaratory order that the extension of his release eligibility date was invalid. On July 17, 1995, W.G. Lutche, the Legal Assistant to the Department of Correction sent a letter to Mr. Martin informing him that his request was inappropriate, and advising him to consult the policy guidelines for the proper grievance procedures.

On September 13, 1995, Mr. Martin filed a Petition for a Writ of Certiorari with the Chancery Court of Davidson County. Because the Petition had been filed more than sixty days after Mr. Martin was informed of the extension of his release eligibility date, the Chancellor found that the Petition had not been timely filed and dismissed it.

II.

The Writ of Certiorari is a discretionary writ that enables a court to order an inferior tribunal to send up a complete record for review, so that the court can determine whether that tribunal has exceeded its jurisdiction, or is acting illegally, fraudulently or arbitrarily. *Yokley v. State*, 632 S.W.2d 123, 126 (Tenn. App. 1981). The court may not inquire into the intrinsic correctness of the decision below, but only the manner by which that decision was reached. *Powell v. Parole Eligibility Review Board*, 879 S.W.2d 871, 873 (Tenn. App. 1994).

Our legislature has decreed that to obtain the writ, a party must file his petition within sixty days from the entry of the order or judgment appealed from. Tenn. Code Ann. § 27-9-102. Failure to file the petition within the statutory time limit results in the order becoming final, and once the decision is final, the court is deprived of jurisdiction. *Thandiwe v. Traughber*, 909 S.W.2d 802 (Tenn. App. 1994); *Wheeler v. City of Memphis*, 685 S.W.2d 4 (Tenn. App. 1984).

This apparently simple rule has presented some difficulties of interpretation in situations where a plaintiff has attempted to preserve the viability of an otherwise untimely petition by arguing that the sixty day period did not begin to run until the conclusion of some administrative appellate procedure, rather than at the time the original judgment or order was issued.

In the present case, the appellant argues that his Petition should be considered timely because it was filed less than sixty days after the rejection of his request for a declaratory order. We believe, however, that to allow the time limit to be tolled by virtue of correspondence between a plaintiff and an official who may or may not be in a position to give that plaintiff some relief would make the sixty day rule virtually meaningless.

There is nothing in the record to indicate that in asking the Commissioner for a declaratory order, Mr. Martin was following any established appeals procedure that might have the effect of postponing the finality of the decision as to the extension of his release eligibility date, and thus advancing the date on which the sixty day time limit should be deemed to have begun to run. In fact, the letter from Mr. Lutche to Mr. Martin indicates quite the opposite.

We conclude that the sixty-day limit began to run, at the very latest, on May 24, 1995, the day that Mr. Martin officially learned that his release eligibility date had been extended by 30%, thereby rendering untimely his petition of September 13, 1995.

We also reject Mr. Martin's argument that the trial court erred by dismissing his petition while his motion for an extension of time to respond to the defendant's motion to dismiss was still pending. Since it was apparent from the face of his petition and its attachments that the petition was not timely filed, we believe it was within the discretion of the trial court to grant the motion to dismiss either for lack of jurisdiction, or for failure to state a claim upon which relief can be granted, without separately ruling on the motion for an extension. See Tenn. R. Civ. Proc., Rule 12.02(1) and (6).

III.

The judgment of the trial court is affirmed. Remand this cause to the Chancery Court of Davidson County for further proceedings consistent with this opinion. Tax the costs on appeal to the appellant.

BEN H. CANTRELL, JUDGE

CONCUR:

HENRY F. TODD, PRESIDING JUDGE
MIDDLE SECTION

WILLIAM C. KOCH, JR., JUDGE

