

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 07, 2015

**DARRELL JONES v. TENNESSEE DEPARTMENT OF CORRECTION, ET
AL.**

**Appeal from the Chancery Court for Wayne County
No. 2014CV5424 Robert L. Jones, Judge**

No. M2014-02389-COA-R3-CV – Filed August 31, 2015

This appeal involves a dispute between a prisoner and the Tennessee Department of Correction regarding the Department's classification of the prisoner as a member of a security threat group. The trial court dismissed the prisoner's petition for writ of certiorari because it was not timely filed, and therefore, the court lacked subject matter jurisdiction to hear the petition. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS and W. NEAL MCBRAYER, JJ., joined.

Darrell Jones, Clifton, Tennessee, appellant, Pro Se.

Herbert H. Slatery, III, Attorney General and Reporter; Andrée Blumstein, Solicitor General; and Madeline B. Brough; for the appellee, Tennessee Department of Correction.

Nathan D. Tilly and James Pentecost, Jackson, Tennessee, for the appellees, Steve Dotson and Corrections Corporation of America.

MEMORANDUM OPINION¹

FACTUAL AND PROCEDURAL BACKGROUND

Darrell Jones is an inmate in the custody of the Tennessee Department of Correction (“TDOC”) and is currently incarcerated at South Central Correctional Facility (“SCCF”) in Clifton, Tennessee. On February 7, 2007, while Mr. Jones was incarcerated at Whiteville Correctional Facility, a privately managed facility run by Corrections Corporation of America (“CCA”), Mr. Jones received a security threat group (“STG”) designation of “Gangster Disciple.”² In October 2010, Mr. Jones was found guilty of participating in STG activity.

On March 16, 2014, Mr. Jones sent the TDOC Commissioner a petition for declaratory order, requesting that the Commissioner reverse the STG designation. On April 15, 2014, TDOC responded to Mr. Jones’s petition by letter, stating, in relevant part:

Your request for action is on a departmental policy matter and is not subject to a declaratory order, as stated in T.C.A. § 4-5-102(10)(A), because departmental policy is not a rule subject to review. STG confirmation is covered by TDOC policy # 506.25 which states, “Inmates may not appeal their confirmation as an STG member, only their recommendation for placement in the STG Program.”

TDOC policy # 506.25 provides that the inmate must be notified and your petition confirms that notification. Furthermore, TOMIS shows that you did attend the STG program while at the Southeast Tennessee Regional Correctional Facility and even though you did graduate from this program in February 2009, you received a class “A” disciplinary on October 26, 2010 where you were found guilty of participating in STG activity. This information

¹Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

²Pursuant to TDOC Policy 506.25(IV)(D), “Security Threat Group” is defined as: “Any group, organization, or association of individuals who possess common characteristics which serve to distinguish them from other individuals or groups who have been determined to be acting in concert so as to pose a threat or potential threat to staff, other inmates, the institution, or the community.” Tenn. Dep’t of Corr. Policy & Procedures 506.25(IV)(D) (Effective June 15, 2006).

is eviden[ce] that you have known of your confirmation prior to and after your attendance to the Department's STG program.

For the reason stated above, your petition for a declaratory order pursuant to T.C.A. § 4-5-223(a) (2) is refused and the department denies your petition.

On July 31, 2014, Mr. Jones filed a Petition for Common Law Writ of Certiorari against the TDOC, CCA, and Steve Dotson, a former employee of CCA (collectively referred to as "Defendants"). Mr. Jones asserts that the STG designation was "applied improperly" and given "in violation of Tennessee Department of Correction policy." He requested the court to remove the STG designation. In September 2014, Defendants filed motions to dismiss, arguing that Mr. Jones failed to file a timely petition. On October 15, 2014, Mr. Jones filed a motion for summary judgment in which he argued that his petition should be considered timely because he "suffered atypical and significant hardship relating to the ordinary incidents of prison life because of restricted access to the courts through refusal of adequate library access."

On November 6, 2014, the chancery court entered an order dismissing Mr. Jones's petition and denying his motion for summary judgment. The court held, "The statute of limitations for any appeal, if one had been appropriate, has now run in this matter. This Court is, therefore, without jurisdiction over the petition for writ of certiorari."

STANDARD OF REVIEW

A motion to dismiss for lack of subject matter jurisdiction is governed by Tenn. R. Civ. P. 12.02(1). A challenge to a court's subject matter jurisdiction involves the court's authority to adjudicate a particular controversy. *Jackson v. Tenn. Dep't. of Corr.*, 240 S.W.3d 241, 243 (Tenn. Ct. App. 2006) (quoting *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000)). The plaintiff bears the burden "to demonstrate that the court has jurisdiction to adjudicate the claim." *Redwing v. Catholic Bishop for the Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012). "Since a determination of whether subject matter jurisdiction exists is a question of law, our standard of review is de novo, without a presumption of correctness." *Northland Ins. Co.*, 33 S.W.3d at 729.

ANALYSIS

Before we begin our analysis, we recognize that Mr. Jones is proceeding pro se in this appeal, as he did in the trial court. "While we afford pro se litigants a significant amount of leeway, *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003), we may not excuse them from adhering to the same procedural rules and substantive law applicable to all parties,

Irvin v. City of Clarksville, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988).” *Hilliard v. Turney Ctr. Disciplinary Bd.*, No. M2011-02213-COA-R3-CV, 2012 WL 5868829, at *2 (Tenn. Ct. App. Nov. 19, 2012).

On appeal, Mr. Jones raises three issues; the dispositive issue, however, is whether Mr. Jones’s petition for writ of certiorari is barred by the applicable statutes of limitation. Our Supreme Court has explained that “[s]tatutes of limitations promote fairness and justice” by, *inter alia*, giving notice to defendants of possible lawsuits and preventing “undue delay in filing lawsuits.” *Redwing*, 363 S.W.3d at 456.

“The common-law writ of certiorari serves as the proper procedural vehicle through which prisoners may seek review of decisions by prison disciplinary boards, parole eligibility review boards, and other similar administrative tribunals.” *Willis v. Tenn. Dep’t of Corr.*, 113 S.W.3d 706, 712 (Tenn. 2003); *see Higgins v. White*, No. M2004-00412-COA-R3-CV, 2006 WL 1763648, at *7-8 (Tenn. Ct. App. June 27, 2006) (discussing the availability of a common law writ of certiorari in a case where the prisoner claimed that the TDOC had incorrectly designated him as an STG member). Tennessee Code Annotated section 27-9-102 provides the time for filing a petition for writ of certiorari:

Such party shall, within sixty (60) days from the entry of the order or judgment, file a petition of certiorari in the chancery court of any county in which any one (1) or more of the petitioners, or any one (1) or more of the material defendants reside, or have their principal office, stating briefly the issues involved in the cause, the substance of the order or judgment complained of, the respects in which the petitioner claims the order or judgment is erroneous, and praying for an accordant review.

This sixty-day statute of limitations “is mandatory and jurisdictional, and the failure to file a petition within that period of time deprives the court of subject matter jurisdiction.” *Jackson*, 240 S.W.3d at 247 (citing *Gore v. Tenn. Dep’t of Corr.*, 132 S.W.3d 369, 379 (Tenn. Ct. App. 2003)).

In this case, Mr. Jones has appealed his STG designation. TDOC Policy 506.25(VI)(F)(5) states, “Inmates may not appeal their confirmation as an STG member, only their recommendation for placement in the STG Program.” In his Petition, Mr. Jones states:

[I] was made aware of STG confirmation upon a special reclass in August of 2007 informing me that I would be transferred to the STG program . . . After inquiry during the special re class in August [I] was informed that the only way to remove confirmation of an STG was to complete the STG program of which

[I] did upon concluding that there existed no other alternative

The record shows that Mr. Jones was designated as a member of an STG in 2007. In 2009, Mr. Jones completed the STG program. In 2010, Mr. Jones received a class “A” disciplinary infraction for his participation in STG activity. Mr. Jones took no action to appeal any of these outcomes until he filed his petition in 2014. An appeal of his placement in the STG program should have been commenced within sixty days of his notification that he was being placed in the STG program. Therefore, Mr. Jones should have commenced his appeal in 2009, at the latest. Mr. Jones’s petition was filed far outside the time period set forth in Tenn. Code Ann. § 27-9-102; thus, the trial court did not err in holding that it lacked subject matter jurisdiction to hear his petition.³

CONCLUSION

For the foregoing reasons, we affirm the chancery court’s dismissal of Mr. Jones’s petition. Costs of appeal are assessed against the appellant, Darrell Jones, and execution may issue if necessary.

ANDY D. BENNETT, JUDGE

³ We find no merit in Mr. Jones’s contention that his petition was dilatory due to restrictions placed on his ability to access the prison law library.