

ASHAD RASHAD ABDULLAH ALI,)	
)	
Petitioner/Appellant,)	Appeal No.
)	01-A-01-9601-CH-00039
v.)	
)	Hickman Chancery
ERIC HARDISON, PAULETTE DAVIS,)	No. 95-121-35
MARSHALL COOPER, DAVID MILLS,)	
DONAL CAMPBELL,)	
)	
Respondents/Appellees.)	

<p>FILED</p> <p>July 10, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT FOR HICKMAN COUNTY
AT CENTERVILLE, TENNESSEE

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AFFIRMED AND REMANDED

SAMUEL L. LEWIS, JUDGE
MEMORANDUM OPINION¹

This is an appeal by petitioner/appellant, Ashad Rashad Abdullah Ali, from the trial court's judgment dismissing his petition for writ of certiorari. The petition sought a review of a disciplinary action taken by the Tennessee Department of Correction ("TDOC") against petitioner. The chancery court determined that petitioner filed his petition in the wrong court and that, as a result, it did not have jurisdiction to entertain the petition. Therefore, the court, sua sponte, dismissed the petition for lack of jurisdiction.

Petitioner filed a petition for common law writ of certiorari in the Chancery Court for Hickman County on 12 December 1995 pursuant to Tennessee Code Annotated title 27 chapters 8 and 9. In his petition, petitioner alleged that he received a disciplinary write up on 23 August 1995 charging him with the offense of "riot." The charge arose out of a strike work stoppage and/or disturbance that occurred on 7 August 1995 at the Turney Center Industrial Prison and Farm in Hickman County, Tennessee. As a result of the inmate disturbance, prison officials placed the entire prison on lock down status for approximately three months.

Petitioner further alleged that he appeared before the prison disciplinary board to answer the charge on 25 August 1995 and that the disciplinary board found him guilty. Thereafter, petitioner appealed the decision to respondent Morton Mills who affirmed the decision of the disciplinary board. Petitioner then appealed to respondent Donal Campbell, the commissioner of TDOC,

¹Court of Appeals Rule 10(b):
The 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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

who denied the appeal and affirmed the decision of the disciplinary board. Petitioner claimed that he received notice on 26 October 1995 of respondent Campbell's decision.

Following the filing of the petition for writ of certiorari, the chancery court entered an order dismissing the petition for lack of jurisdiction. The court found that petitioner should have filed the writ in Davidson County because he sought relief against an agency of the state government. Petitioner appealed the chancery court's finding. Thus, the issue before this court is whether the Hickman County Chancery Court correctly dismissed the petition for lack of jurisdiction.

In *Bishop v. Connely*, 894 S.W.2d 294 (Tenn. Crim. App. 1994), petitioner filed a writ of habeas corpus in the Lake County Circuit Court challenging a disciplinary board ruling by TDOC. The trial court dismissed the petition and Bishop appealed. On appeal, the Court of Criminal Appeals affirmed the decision of the trial court and held that the proper method for challenging a disciplinary action by TDOC is to file a petition for writ of certiorari, not a petition for writ of habeas corpus. *Bishop*, 894 S.W.2d at 296. The court further held that, because Bishop was seeking relief against an agency of state government, he should have filed his petition for writ of certiorari in the county which is the official situs of the agency head's office. *Id.* The court concluded that the Davidson County courts should review prisoners' petitions for writ of certiorari challenging a disciplinary action of TDOC. *Id.*

Here, petitioner should have filed his petition for writ of certiorari in Davidson County. It challenged a disciplinary action taken by TDOC against petitioner. Accordingly, the proper court to

consider the petition was a Davidson County court.

In support of his contention that Davidson County courts do not have exclusive jurisdiction, petitioner relied on an unreported opinion of the Western Section of this court. **Williams v. Tennessee Dep't of Correction**, No. 02-A-01-9503-CV-00046, 1995 WL 575142 (Tenn. App. 2 Oct. 1995). The facts in **Williams** were almost identical to those in this case. The one factual difference was that the inmate in **Williams** filed his petition for writ of certiorari in Lauderdale County because he was incarcerated at the West Tennessee High Security Facility. The **Williams** court held that the courts of Lauderdale County had concurrent jurisdiction with the courts of Davidson County. In reaching its decision, the court stated:

In the case before us, petitioner seeks review of actions taken by the prison disciplinary board, the prison warden, and the commissioner of the Department of Correction. Petitioner is not seeking review of a decision of a state board "exclusively located elsewhere." The situs of the disciplinary board involved herein is at WTHSF, in Lauderdale County. Furthermore, petitioner is an inmate at the same institution. The warden and members of the disciplinary board, employees of the prison, have their principal office in Lauderdale County, and likely have their residences there as well. The incident from which the charge against petitioner stems occurred in Lauderdale County as did the disciplinary board's hearing on the matter and the warden's affirmance of the board's decision. Only the commissioner of the Department of Correction is located in Davidson County.

In our opinion, all jurisdictional requirements are met for the filing of the petition for certiorari in the courts of Lauderdale County.

Id. at *4. In the opinion of the **Williams** court, it was appropriate to consider that the inferior tribunal or board from which the prisoner was seeking review under Tennessee Code Annotated section 27-8-101 was really the disciplinary board located in Lauderdale County, not the commissioner located in Davidson County.

Petitioner adopted the reasoning in the *Williams* case. He argued that he should be allowed to file his petition in Hickman County because he was seeking a review of the decision of the disciplinary board located in Hickman County, because the warden's affirmance of the decision occurred in Hickman County, and because the "riot" occurred in Hickman County. Respondents countered that, if petitioner wished to file his petition in Hickman county based on the argument that the situs of the inferior tribunal or board was more closely associated with Hickman County than with Davidson County, petitioner should have filed his petition within sixty days of the disciplinary board's decision or the warden's affirmance . Tennessee Code Annotated section 27-9-102 provides that a party shall file their petition within sixty days from the entry of the order or judgment. Tenn. Code Ann. § 27-9-102(1980).

Here, the disciplinary board rendered their decision on 25 August 1995. The warden affirmed the decision of the disciplinary board on 14 September 1995. Respondent Commissioner Campbell affirmed the decision on 26 October 1995. Petitioner did not file his petition until 12 December 1995. That is, he failed to file his petition within sixty days of either the disciplinary board's judgment or the warden's affirmance. Therefore, we are of the opinion that Hickman County is not the proper forum to consider the petition.

Petitioner did file his petition within sixty days of Commissioner Campbell's affirmance. Therefore, petitioner obviously chose the date on which the commissioner affirmed the decision to be the starting point from which the sixty day statute of limitation would begin to run. Thus, we are of the opinion that we should construe his petition as one challenging the overall disciplinary action process which ended in the office of the commissioner of TDOC located in Davidson County, not as one seeking

merely to challenge the decision of the local disciplinary board.

The judgment of the chancery court is therefore affirmed, and the cause is remanded for any further necessary proceedings. Costs on appeal are taxed to the petitioner/appellant, Ashad Rashad Abdullah Ali.

SAMUEL L. LEWIS, JUDGE

CONCUR:

HENRY F. TODD, P.J., M.S.

BEN H. CANTRELL, JUDGE