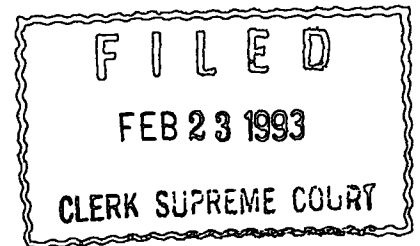


IN THE COURT OF APPEALS OF IOWA

No. 3-021 / 92-376



RONALD BREWER,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

Appeal from the Iowa District Court for Lee County,
Harlan W. Bainter, Judge.

Ronald Brewer appeals from the district court order
that dismissed his application for postconviction relief.

AFFIRMED.

Philip B. Mears of the Mears Law Office, Iowa City, for
appellant.

Bonnie J. Campbell, Attorney General, William C. Hill
and R. Andrew Humphrey, Assistant Attorneys General, for
appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

Applicant-appellant Ronald Brewer appeals the dismissal of his postconviction relief petition. His petition was dismissed when the trial court determined it was not timely filed. We affirm.

Brewer is serving a life sentence at the Iowa State Penitentiary. In October 1987 he received disciplinary sanctions. He filed this Application for Post Conviction Relief on April 8, 1991. In 1987 Iowa Code section 663A.3 provided disciplinary action had to be brought in three years. In 1989 the section was amended reducing the statute of limitations for disciplinary actions from three years to ninety days and required old disciplines to be filed by January 1, 1990. Brewer's petition was filed after January 1, 1990, and more than three years after the discipline, consequently, the statute on filing his claim had run.

Brewer's contention is he should be saved under Iowa Code section 614.10 because he filed a federal action. Brewer, before filing this petition for postconviction relief, filed in state court a suit claiming relief under 42 U.S.C. section 1983 challenging what he alleges was the same discipline in federal court. Brewer claims in 1988 a federal district court judge ruled it was not necessary for Brewer to exhaust his state remedies before challenging the discipline in federal court, and the Eighth Circuit

reversed that holding. He contends this justifies a late filing of this procedure. The State contends Brewer's action was not stayed in federal court, and there is no basis to this claim.

The Eighth Circuit granted an interlocutory appeal from Brewer's case and consolidated it with actions of other inmates.

In addressing Brewer's claim, the court said:

Ronald Brewer's section 1983 complaint challenges the constitutionality of his lengthy confinement in predisciplinary investigative lock-up. Because summary placement in investigative lock-up does not entail a loss of good-time credits, a finding that the prison had acted unconstitutionally would not affect the length of Brewer's confinement, and the rationale of Offet v. Solem, 823 F.2d 1256 (8th Cir. 1987) is inapplicable. Accordingly, we affirm the denial of the motion to stay, and remand for further proceedings. Bressman v. Farrier, 900 F.2d 1305, 1307 (8th Cir. 1990).

We agree with the State, Brewer's case was not stayed by Bressman. There is no basis, therefore, to Brewer's argument that the statute of limitations for Brewer to bring this action should be extended because of his case in federal court.

AFFIRMED.