IN THE COURT OF APPEALS OF IOWA

No. 4-019 / 93-372

FILED
MAR 24 1994
CLERK SUPREME COURT

MICHAEL G. RILEY,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Jones County, Thomas M. Horan, Judge.

Inmate Michael Riley appeals a judgment of the district court regarding his loss of good conduct time. **WRIT ANNULLED.**

Patrick E. Ingram of the Mears Law Office, Iowa City, for appellant.

Bonnie J. Campbell, Attorney General, and Suzie Berregaard Thomas, Assistant Attorney General, for appellee.

Considered by Hayden, P.J., Habhab, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

HAYDEN, P.J.

Michael Riley and another inmate were found on the roof of the Mt. Pleasant Correctional Facility on the evening of September 27, 1991. Riley was captured, and disciplinary proceedings were brought against him. The prison disciplinary committee found Riley guilty of attempted escape and several other prison rules. The prison disciplinary committee sanctioned Riley with thirty days of disciplinary detention and 365 days of administrative segregation. The disciplinary committee recommended a loss of all good conduct time earned and a transfer to a maximum security facility.

Riley appealed the disciplinary committee's decision. Riley contended the loss of all good conduct time earned to date was "extremely harsh." The deputy superintendent of the correctional facility affirmed the disciplinary committee's decision. The deputy superintendent indicated the administrative law judge (ALJ) followed the disciplinary and department guidelines in reaching his decision. The deputy superintendent stated the amount of good conduct time which was being recommended for forfeiture was 1914 days.

Riley then appealed to the department of corrections. The deputy director denied Riley's appeal. The deputy director later requested corrective action be taken in order that the ALJ specify the amount of good conduct time to be forfeited by the inmate. Upon receipt of this

memorandum from the department concerning Riley's loss of good time, the ALJ, who presided over the initial hearing, scheduled a re-hearing. The ALJ recommended Riley lose only 916 days of good conduct time out of a maximum earned by Riley of 1914 days.

After exhausting his administrative remedies, Riley filed the present application for postconviction relief. The district court denied the application. Riley filed a notice of appeal on February 26, 1993.

Riley argues the language of Iowa Code section 903A.4 (1993) requires the department of corrections to establish guidelines to control the discretion of the administrative law judges regarding the issue of loss of good time. Riley argues that in the present case, there are no guidelines. Riley requests this court to remand this case to the department of corrections to establish appropriate guidelines for the ALJ in determining loss of good conduct time.

Under Iowa Rule of Appellate Procedure 304 we treat the notice of appeal to be, as it should have been pursuant to Iowa Code section 822.9 (1993), a petition for issuance of a writ of certiorari. Iowa R. App. P. 304; see Shannon v. Hansen, 469 N.W.2d 412, 414 (Iowa 1991); Bush v. Iowa Dist. Court, 369 N.W.2d 424, 425 (Iowa 1985). Certiorari is a procedure to test whether a lower board, tribunal, or court exceeded its proper jurisdiction or otherwise acted illegally. Iowa R. Civ. P. 306. It is an action at law;

our review is not de novo. Backstrom v. Iowa Dist. Court, 508 N.W.2d 705, 707 (Iowa 1993).

I. Riley claims the ALJ's decision was arbitrary and violated statutorily mandated rule requirements. Riley argues the department of corrections failed to provide guidance to the ALJ with regard to determining punishment.[1]

The applicable statutes regarding the forfeiture of an inmate's good conduct time are located in chapter 903A of the Iowa Code. Iowa Code section 903A.3(1) provides:

> Upon finding that an inmate has violated an institutional rule, the independent administrative law judge may order forfeiture of any or all good conduct time earned and not forfeited up to the date of the violation by the inmate. The independent administrative law judge has discretion within the guidelines established pursuant to section 903A.4, to determine the amount of time that should be forfeited based upon the severity of the violation. Prior violations by the inmate may be considered by the administrative law judge in the decision.

Iowa Code § 903A.3(1) (1991) (emphasis added). Section 903A.4 states, in part:

> The director of the Iowa department of corrections shall develop policy and procedural rules to implement section 903A.1 through 903A.3. The rules may specify disciplinary offenses which may result in the loss of good conduct time, and the amount of good conduct time which may be lost as a result of each disciplinary offense.

Iowa Code § 903A.4 (1991) (emphasis added). Riley argues this section requires the department of corrections to establish guidelines to control the discretion of the ALJ.

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1. See Scott v. State, No. 4-017/93-329 filed by this court on March 24, 1994.

We disagree. The language in section 903A.4 is not mandatory.

The district court noted the State of Iowa, Department of Corrections' disciplinary policy and procedures guidelines provided in section I(C)(2)(b): "In cases of escape, attempted escape, and serious or dangerous violence, the Administrative Law Judge may recommend a loss of any or all accumulated good conduct time. Such recommendations shall be subject to review by the Director of the Division of Institutions."

The district court properly concluded the recommendation of a loss of 916 days of good conduct time is well within the departmental regulations and discretion of the ALJ. We annul the writ of certiorari.

Costs of this appeal are assessed to Riley.

WRIT ANNULLED.