IN THE COURT OF APPEALS OF IOWA

No. 6-586 / 95-1291

KEITH WALKER,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

FILED
DEC 20 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Lee County, William L. Dowell, Judge.

Keith Walker appeals the district court's dismissal of his postconviction relief action. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and William Hill, Assistant Attorney General, for appellee.

Considered by Sackett, C.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by an applicant claiming the district court should have granted his application for postconviction relief from prison disciplinary action. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On March 7, 1994, the prison disciplinary committee at the Iowa State Penitentiary found Keith Walker had violated prison rule 2, assault, and he was given sanctions. Walker appealed the disciplinary action to the warden. On March 14, 1994, the executive assistant to the warden found Walker had violated rule 2, but suspended the sanctions for ninety days. On April 20, 1994, a supplemental appeal was denied by an administrative assistant. On June 30, 1994, Walker's appeal to the Iowa Department of Corrections was denied.

Walker filed an application for postconviction relief on May 5, 1995. The State filed a motion for summary judgment, claiming Walker's application was untimely under the statute of limitations found in Iowa Code section 822.3. The district court found the application was untimely and granted the motion for summary judgment. Walker now appeals.

Walker contends the district court improperly granted summary judgment in this case. He recognizes section 822.3 requires a prisoner to file an application for postconviction relief within ninety days from the date the disciplinary decision is final. He claims, however, there was no "final" decision in this case because he never received a decision from the warden. He points out that the inmate rule book

provides the initial appeal of a prison disciplinary decision should be made to the warden, who shall respond to an appeal in writing within fifteen days.

We conclude there had been a final decision in this case. Section 903A.3(2) provides that a decision of an administrative law judge is subject to appeal to the "superintendent or warden of the institution, or the superintendent's or warden's designee." Here, the executive assistant to the warden was the warden's designee. We also note Walker did not raise the issue in his supplemental appeal or his appeal to the Department of Corrections that the decision in his initial appeal should have been made by the warden instead of the warden's designee. Instead, he appealed solely on the merits of the disciplinary action.

We conclude Walker's application for postconviction relief was untimely because it was not filed within ninety days of the decision of the Department of Corrections. We affirm the decision of the district court. Costs of this appeal are assessed to Walker.

AFFIRMED.