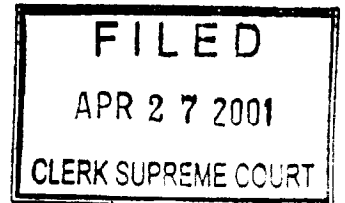


IN THE COURT OF APPEALS OF IOWA

No. 0-741 / 00-0294

Filed April 27, 2001



JOHN DAVID JOHNSON,
Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF
CORRECTIONS, DAVIE SCURR,
CHARLES HIGGINS, LARRY
BRIMEYER, FRANK CLOONEY,
FRANK ROFFE, BILL STUMPL,
RUTH ALLISON and GEORGIA
MCDANIAL,**
Respondents-Appellees.

Appeal from the Iowa District Court for Henry County, John G. Linn,
Judge.

Petitioner appeals the district court ruling dismissing his petition for judicial review of a decision by the Iowa Department of Corrections that resulted in the imposition of prison discipline. **AFFIRMED.**

John David Johnson, Anamosa, pro se.

Thomas J. Miller, Attorney General, and Forrest Guddall, Assistant
Attorney General, for appellees.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

John Johnson appeals the district court ruling dismissing his petition for judicial review of a decision by the Iowa Department of Corrections that resulted in the imposition of prison discipline. Johnson claims he is not appealing a disciplinary report, and thus, he is not limited to postconviction proceedings under Iowa Code chapter 822, but could bring this action pursuant to chapter 17A. We affirm on appeal.

In July 1998, Johnson was an inmate at the Mount Pleasant Correctional Facility. He received a disciplinary notice alleging he had violated prison rules by ordering nineteen books, when prison rules limited inmates to having ten books in their possession. An administrative law judge found Johnson had violated the rule against attempt or complicity, by attempting to get nineteen books into the facility, which was over the allowed limit. Johnson received a written reprimand. The books were disposed of because they were contraband.

Johnson appealed to the facility's deputy superintendent, and the appeal was denied. He also appealed to Iowa Department of Corrections, and that appeal was denied as well.

Johnson filed a petition pursuant to section 17A.19 against the Department and certain facility employees. He claimed the disciplinary proceedings violated his civil rights. He asked to have respondents replace the books confiscated from him. The district court determined, "The avenue that the Iowa Legislature has provided for redress of all concerns in postconviction matters is Chapter 822 of the Iowa Code." The court found because Johnson

had brought suit pursuant to chapter 17A, the court lacked subject matter jurisdiction to consider the suit. The petition for judicial review was dismissed. Johnson appeals.

We review a district court's ruling on a motion to dismiss for correction of errors at law. Iowa R. App. P. 4. We will uphold the district court's ruling only if the plaintiff is unable to sustain his cause of action under any state of facts provable under the petition. *Robbins v. Heritage Acres*, 578 N.W.2d 262, 264 (Iowa Ct. App. 1998). Allegations in the petition are viewed in a light most favorable to plaintiff. *Schaffer v. Frank Moyer Constr., Inc.*, 563 N.W.2d 605, 607 (Iowa 1997).

Johnson contends his appeal is not the result of the disciplinary proceeding, and thus, he is not limited to an appeal under chapter 822. He asserts his suit under chapter 17A is proper because he is appealing the decision of the Department of Corrections to deny him legal materials. He states the disciplinary report was a mere by-product of the department's decision to deny him the books he had ordered.

The Iowa Administrative Procedure Act, chapter 17A, has no application to prison disciplinary proceedings. *Langley v. Scurr*, 305 N.W.2d 418, 419 (Iowa 1981). The legislature did not include prison disciplinary committees within the definition of agencies under section 17A.2(1). *Wycoff v. Iowa Dist. Court*, 580 N.W.2d 786, 788 (Iowa 1998). There is no alternative right to challenge a prison disciplinary committee's actions under chapter 17A. *Lockray v. State*, 495

N.W.2d 754, 755 (Iowa 1993); *Scott v. State*, 517 N.W.2d 718, 722 (Iowa Ct. App. 1994).

We find Johnson is appealing the action of the disciplinary committee. In his notice of appeal he states, "[h]e was complaining in regards to the procedure and manner in which the Defendants conducted the Administrative Procedure Disciplinary hearing and ruling(s) and its Regulations thereof." In his brief, he attempts to relitigate the disciplinary proceedings, stating the policy limiting the number of books allowed to a prisoner should not apply to legal materials. The district court was correct in dismissing Johnson's suit because it was brought under chapter 17A, which has no application to prison disciplinary proceedings.

We conclude plaintiff's petition failed to state a claim upon which any relief may be granted, and was properly dismissed under Iowa Rule of Civil Procedure 88(a)(6). We affirm the decision of the district court.

AFFIRMED.