

STATE OF MICHIGAN
COURT OF APPEALS

DWIGHT FORD,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

April 23, 2002

No. 228219

Ingham Circuit Court

LC No. 99-090458-AA

Before: Cavanagh, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted a circuit court order dismissing his application for judicial review of a prison misconduct decision. We reverse and remand to the circuit court for consideration of plaintiff's petition.

On March 5, 1999, plaintiff, a prisoner in a state correctional facility, was found guilty of a major misconduct violation. On May 24, 1999, plaintiff's request for a rehearing under MCL 791.254 was denied. At some date prior to July 26, 1999, and pursuant to MCL 791.255(2), plaintiff submitted to the circuit court an application for direct review, a motion for waiver of fees and costs with an affidavit of indigency, and a certificate of his institutional account activity. On July 26, 1999, the court entered an order suspending plaintiff's filing fee under MCL 600.2963(7) and further ordered the DOC to retain half of all plaintiff's future account deposits until the filing fee was paid. On July 28, 1999, the circuit court docketed the matter. On December 30, 1999, the circuit court dismissed plaintiff's petition for judicial review as untimely. This Court granted leave to appeal limited to the issue whether plaintiff's application for judicial review was timely.

On appeal, plaintiff argues that the circuit court improperly dismissed his application for judicial review because it was timely. We agree, albeit for a different reason than proposed by plaintiff. Plaintiff claims that, by operation of MCR 1.108(1), he had until July 27, 1999, to submit his petition for judicial review, therefore, his petition was timely. However, plaintiff miscalculates the dates. Plaintiff's motion for rehearing was denied on May 24, 1999; accordingly, he had until Friday, July 23, 1999, i.e., sixty days from May 25, 1999 (as computed under MCR 1.108), to seek judicial review. It appears that plaintiff did seek judicial review within sixty days of the adverse decision as required by MCL 791.255(2). However, plaintiff's application appears to have been dismissed as untimely because it was not *docketed* until July 28, 1999. Therefore, the issue is whether plaintiff's application for direct review was timely when it

was submitted to the circuit court with a claim of indigency, MCL 600.2963(1), within the sixty-day limitation period of MCL 791.255(2). We conclude that it was timely.

MCL 791.255 provides that a prisoner may seek judicial review of an adverse disciplinary decision, rendered under MCL 791.251 *et seq.*, within sixty days after exhausting administrative remedies. In particular, MCL 791.255(2) states that “a prisoner aggrieved by a final decision or order may file an application for direct review in the circuit court” An indigent prisoner who cannot immediately pay the full filing fee to the circuit court, MCL 600.2529, may submit a claim of indigency, MCR 2.002; MCL 600.2963(1). An application for direct review accompanied by such claim of indigency, that is submitted to and received by the circuit court within the sixty-day time period imposed by MCL 791.255(2), is timely filed for purposes of MCL 791.255(2). *Keenan v Dep’t of Corrections*, ___ Mich App ___, ___ NW2d ___ (Docket No. 223731, issued April 16, 2002).

In this case, it is undisputed that plaintiff’s application for judicial review and claim of indigency were submitted to the circuit court within the requisite sixty days prescribed by MCL 791.255(2). Thereafter, the circuit court entered an order suspending plaintiff’s filing fee under MCL 600.2963(7) and the matter was docketed. Accordingly, the circuit court improperly dismissed plaintiff’s timely filed petition.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Peter D. O’Connell