

STATE OF MICHIGAN
COURT OF APPEALS

DAVID P. LAKIN,

Petitioner-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

UNPUBLISHED

July 19, 2012

No. 305154

Ingham Circuit Court

LC No. 11-000612-AA

Before: DONOFRIO, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Petitioner, an inmate of the G. Robert Cotton Correctional Facility, appeals by right from the order of the trial court dismissing his petition for judicial review of his prisoner misconduct conviction. Because we conclude that the trial court correctly determined that it lacked jurisdiction to review his conviction, we affirm the dismissal.

Review of the final decisions and orders conducted by the Michigan Department of Corrections Hearings Division are subject to judicial review. MCL 791.255. A prisoner seeking review of such a decision or order, who has exhausted administrative remedies, may apply for direct review in the circuit court of the county where the petitioner resides or in Ingham County. MCL 791.255 (1), (2). However, the Hearing Division's responsibilities are limited, and extend only to prisoner hearings "that may result in the loss by a prisoner of a *right*," specifically including "punitive segregation, loss of disciplinary credits, or the loss of good time", "[a] security classification that may result in the placement of a prisoner in administrative segregation", permanent restriction from community placement, restrictions on visitors, and "[h]igh or very high assaultive risk classifications", as well as any hearing that "may result in the accumulation of disciplinary time". MCL 791.251 (2), (3) (emphasis added). The Hearings Division specifically "is not responsible for a prisoner hearing that is conducted as a result of a minor misconduct charge that would not cause a loss of good time or disciplinary credits, or result in placement in punitive segregation." MCL 791.251 (5).

The penalty imposed upon petitioner for his misconduct was limited to the loss of privileges for three days. He also suffered the collateral consequence of loss of his prison employment. We conclude that this penalty does not result in the loss of a "right" such as would require a hearing under the purview of the Hearings Division (and from which would arise an opportunity for judicial review). See *Martin v Stine*, 214 Mich App 403, 419; 542 NW2d 884

(1995); see also *Manning v Hazel Park*, 202 Mich App 685, 694; 509 NW2d 874 (1993) (an employee has no property interest in continued at-will employment). Because the penalty imposed on petitioner did not result in the loss of a “right,” a hearing on petitioner’s misconduct did not fall under the purview of the Hearings Division, and petitioner is not entitled to judicial review of his conviction.

Petitioner is correct that the offense of theft is classified under the relevant administrative rule as a major misconduct that may be punished by the loss of up to one year of good time and disciplinary credits. R 791.5513(c)(v). However, as the trial court correctly noted, the rule is permissive. MDOC has made a policy decision not to apply such penalties to the offense of theft and to classify it as “Class II”, or minor, misconduct. Petitioner alleges that this policy impermissibly restricts the hearing procedures of MCL 791.252¹ to Class I offenses. Petitioner is in error. Class II and Class III offenses cannot, per MDOC policy, result in the penalties listed in MCL 791.251. Charges that would not result in sanctions described in MCL 791.251 are “specifically excluded from those matters in which a prisoner is entitled to a hearing” and are not subject to judicial review. *Martin*, 214 Mich App at 409.

We therefore conclude that the trial court correctly determined that petitioner had no statutory right to judicial review of his misconduct conviction. Additionally, we find the petitioner’s claim that he was denied due process of law to be without merit. Due process guarantees apply to adjudications of important rights. US Const, Am V; US Const, Am XIV; Const 1963, art 1, § 17; *Thomas v Deputy Warden, State Prison of Southern Mich*, 249 Mich App 718, 724; 644 NW2d 59 (2002).² A claimant alleging a due process violation must have a legitimate claim of entitlement to the interest. *Williams v Hofley Mfg Co*, 430 Mich 603, 610; 424 NW2d 278 (1988).

Punishments resulting merely in loss of privileges do not implicate a liberty interest under the Due Process Clause, unless such punishment represents a “dramatic departure” from the basic conditions of a prisoner’s sentence or affects the duration of his sentence. *Martin*, 214 Mich App at 419-420, quoting *Sandin v Conner*, 515 US 472, 485; 115 S Ct 2293, 2301 (1995). Therefore, although the Michigan constitution mandates judicial review of agency decisions that are judicial or quasi-judicial and “affect private rights and licenses”, Const 1963, art 6, § 28, minor misconduct sanctions are not subject to judicial review on the grounds that a prisoner has been denied due process of law, because they do not affect private rights and licenses. *Martin*, 212 Mich App at 414; see also *Williams*, 430 Mich at 610 (“The applicability of procedural due process guarantees depends initially on the presence of a ‘property’ or ‘liberty’ interest within the meaning of the Fifth or Fourteenth Amendment.”).

¹ The hearing procedures set forth in MCL 791.252 apply to hearings conducted by the Hearing Division pursuant to its responsibilities under MCL 791.251.

² For simplicity, both the United States and Michigan constitutional due process guarantees are simply referred to as “due process” or “the Due Process Clause.”

Petitioner argues that his conviction could affect the consideration of the parole board. Even if true, however, this potentiality does not create a liberty interest, because “[t]he chance that a finding of misconduct will alter the balance [of a parole board’s decision] is simply too attenuated to invoke the procedural guarantees of the Due Process Clause.” *Sandin*, 515 US at 487.

Affirmed.

/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra