

IN THE COURT OF APPEALS OF IOWA

No. 8-759 / 07-1216
Filed October 29, 2008

LEONARD WAYNE MOORE,
Applicant-Appellant,

vs.

STATE OF IOWA
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve,
Judge.

Applicant appeals the district court decision denying his request for
postconviction relief. **AFFIRMED.**

Robert A. Phelps, Bettendorf, for appellant.

Leonard W. Moore, Anamosa, appellant pro se.

Thomas J. Miller, Attorney General, and John R. Lundquist, Assistant
Attorney General, Michael J. Walton, County Attorney, and Amy Devine,
Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Doyle, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ROBINSON, S.J.**I. Background Facts & Proceedings**

Leonard Moore pled guilty to two counts of second-degree sexual abuse, in violation of Iowa Code section 709.3 (1993). On December 23, 1993, he was sentenced to a term of imprisonment not to exceed twenty-five years on each count, to be served consecutively.

Moore filed a pro se application for postconviction relief on July 8, 2005, alleging he had been improperly denied parole because the Iowa Board of Parole had not granted him an in-person interview. He also claimed an amendment to Iowa Code section 906.5 (Supp. 1993) had been applied in an ex post facto manner in his case. The State filed a motion for summary judgment, claiming Moore failed to exhaust his administrative remedies to challenge the ruling of the Board.

The district court granted the State's motion for summary judgment. The court ruled:

Moore states he appealed a couple of the Board's actions, but even if this court believed that, it is undisputed he never sought judicial review of any administrative appeal. As a result, even if Moore's postconviction relief application were valid, his failure to exhaust his administrative remedies deprives this court of jurisdiction to address these issues. On this basis as well, Moore's application for postconviction relief is denied.

The court also determined Moore's claims should be denied on the merits.

Moore appeals the decision of the district court.

II. Standard of Review

Postconviction proceedings are civil actions, and are generally reviewed for the correction of errors at law. Iowa R. App. P. 6.4; *Bugley v. State*, 596 N.W.2d 893, 895 (Iowa 1999). The district court may grant summary judgment in a postconviction action if “there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. Iowa Code § 822.6 (1993).

III. Merits

A. The Iowa Board of Parole is an agency coming under the governance of the Iowa Administrative Procedure Act, chapter 17A. *Frazer v. Iowa Bd. of Parole*, 248 N.W.2d 80, 83 (Iowa 1976). Parole revocation proceedings are contested case proceedings, and review of the Board’s action under chapter 17A is appropriate. *Id.* Chapter 822, governing postconviction actions, does not expressly negate the applicability of chapter 17A. *Dougherty v. State*, 323 N.W.2d 249, 250 (Iowa 1982).

A party challenging a decision of the Board must exhaust administrative remedies before seeking relief in the courts. *Johnson v. Iowa Dep’t of Corrections*, 635 N.W.2d 487, 489 (Iowa Ct. App. 2001). “The district court is deprived of jurisdiction over the case if administrative remedies are not exhausted.” *Id.* at 488. We affirm the district court’s decision finding it did not have jurisdiction to hear Moore’s complaints about the action of the Board because he had not exhausted his administrative remedies.

B. In the alternative, the district court found Moore’s claims should be denied on the merits. We adopt the district court’s decision regarding the merits

of Moore's claims. Moore pled guilty to offenses which occurred in September and October 1993. Section 906.5 as amended in 1993 would have applied at that time. Furthermore, the Iowa Court of Appeals has determined the amended version of 906.5 does not offend the ex post facto clause. *Taylor v. State*, 752 N.W.2d 24, 30 (Iowa Ct. App. 2008).

We affirm the decision of the district court.

AFFIRMED.