IN THE SUPREME COURT OF IOWA

No. 16–1171

Filed December 15, 2017

KEVIN KEL FRANKLIN,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Union County, John D. Lloyd, Judge.

A prisoner appeals a district court order finding it did not have subject matter jurisdiction to hear his case. **REVERSED AND REMANDED.**

Unes J. Booth of Booth Law Firm, Osceola, for appellant.

Thomas J. Miller, Attorney General, Thomas J. Ogden, Assistant Attorney General, and Timothy R. Kenyon, County Attorney, for appellee.

WIGGINS, Justice.

A prisoner filed a postconviction-relief action claiming the policy of the Iowa Department of Corrections (IDOC) in delaying the start date of the sex offender treatment program (SOTP) based on a sex offender's tentative discharge date unlawfully extended his time in prison. The district court held it lacked subject matter jurisdiction to hear the prisoner's challenge under Iowa Code section 822.2 (2015). On appeal, we find the proper analysis is not one of subject matter jurisdiction but a lack of authority to hear the case. We additionally find the district court did have authority to hear the case and remand the case for further proceedings consistent with this opinion.

I. Background Facts and Proceedings.

In 1990, Kevin Franklin pled guilty to murder in the second degree and sexual abuse in the second degree. The district court consecutively sentenced him to an indeterminate term not to exceed fifty years for the murder and an indeterminate term not to exceed twenty-five years for the sexual abuse. We affirmed the convictions on direct appeal on June 21, 1991, and procedendo issued on July 12. Franklin has been eligible for parole since 2012 and has a tentative discharge date of 2033.

On November 5, 2015, Franklin filed a pro se application for postconviction relief stating he was "otherwise unlawfully held in custody or other restraint"—language identical to Iowa Code section 822.2(1)(*e*)—and a motion for correction of an illegal sentence.[1] In these two filings, Franklin alleged the IDOC required him to complete SOTP yet continually denied his requests to participate in SOTP because it was not yet time.

[1]Because the two documents contained similar claims, the district court docketed both as a postconviction-relief action (PCCV017906).

Franklin argued the IDOC decision to withhold SOTP until a sex offender was within two to three years from discharging was "being done intentionally and maliciously as a way for the IDOC to artificially lengthen his sentence and effectively remove any meaningful chance of parole or work release." Franklin contended the IDOC was fully aware the Iowa Board of Parole (IBOP) would not consider a sex offender for parole before the sex offender's completion of SOTP. He likened the IDOC policy to the imposition of a silent mandatory minimum.

On February 3, 2016, the State moved for summary judgment, arguing, "[n]o factual nor legal basis exists to support the allegations made by [Franklin]" under the listings set out in chapter 822. The State further argued Franklin's challenge, although labeled as a "motion to correct illegal sentence," was more accurately characterized as a parole or administrative issue.

On July 6, the district court granted the State's motion for summary judgment on the ground it lacked subject matter jurisdiction and dismissed the case. After noting *Maghee v. State*, 773 N.W.2d 228 (Iowa 2009), and *Davis v. State*, 345 N.W.2d 97 (Iowa 1984), involved disciplinary actions reviewable under chapter 822, the district court reasoned Franklin's case was not a disciplinary action. The district court also noted the IDOC was lawfully holding Franklin in custody under his sentence, and Franklin's sentence itself was legal. The district court ruled Franklin "must pursue other remedies to challenge the policy" without specifying what those "other remedies" might be.

II. "Subject Matter Jurisdiction" Versus "Authority to Hear a Case."

Before reaching the issue in this case, we again stress the difference between "subject matter jurisdiction" and "authority" to hear a particular case. In *In re Estate of Falck*, we explained,

> [W]e distinguished subject matter jurisdiction from the court's "lack of authority to hear a particular case," also referred to as "lack of jurisdiction of the case." "Subject matter jurisdiction" refers to the power of a court to deal with a class of cases to which a particular case belongs. A constitution or a legislative enactment confers subject matter jurisdiction on the courts. Although a court may have subject matter jurisdiction, it may lack the authority to hear a particular case for one reason or another.

672 N.W.2d 785, 789–90 (Iowa 2003) (citation omitted) (quoting *Christie v. Rolscreen Co.*, 448 N.W.2d 447, 450 (Iowa 1989)). The district court stated it lacked subject matter jurisdiction. If the district court was correct in so concluding, it should have stated it lacked authority to hear the case under section 822.2. It would behoove district courts to be aware of this distinction.

III. Scope of Review and Issue.

Franklin's appeal is from a summary judgment ruling. We review postconviction-relief proceedings for errors at law. *Everett v. State*, 789 N.W.2d 151, 155 (Iowa 2010). This includes summary dismissals of postconviction-relief applications. *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011). The district court must render summary judgment

> if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Iowa R. Civ. P. 1.981(3). The parties agree there are no disputed facts for a fact finder to determine that would affect the court's authority to hear

this case. Thus, the issue we must decide is whether the court has authority to adjudicate Franklin's claim under section 822.2.

IV. Analysis.

We are not deciding the merits of Franklin's claim but determining whether the court can hear his claim as alleged. Franklin did not ask the district court to decide whether the policies and practices of the IBOP are proper. He asked the district court to decide whether the policy of the IDOC to withhold SOTP until a sex offender is within two to three years from discharging is proper.

Franklin stated in his pro se application for postconviction relief that he was "otherwise unlawfully held in custody or other restraint"—language identical to Iowa Code section 822.2(1)(*e*). Franklin appears to bring his claim pursuant to section 822.2(1)(*e*), which provides,

> Any person who has been convicted of, or sentenced for, a public offense and who claims any of the following may institute . . . a proceeding under this chapter to secure relief:
>
> . . . .
>
> . . . the person is otherwise unlawfully held in custody or other restraint.

Iowa Code § 822.2(1)(*e*).

The State urges this court to apply the reasoning and holding of an unpublished decision by the Iowa Court of Appeals with facts that resemble those in this case. However, we will not consider this decision. Iowa R. App. P. 6.904(2)(*c*) ("Unpublished opinions or decisions shall not constitute controlling legal authority.").

We have expanded the postconviction-relief method of review to SOTP classifications, work release revocations, and disciplinary actions involving a substantial deprivation of liberty or property interests. *Pettit v. Iowa Dep't of Corr.*, 891 N.W.2d 189, 193–96 (Iowa 2017) (discussing

SOTP classification); *Maghee*, 773 N.W.2d at 235–42 (examining revocation of work release); *Davis*, 345 N.W.2d at 98–100 (discussing administrative segregation).

In *Davis*, a prison disciplinary committee found an inmate guilty of violating a penitentiary rule and penalized him for thirty-six months in administrative segregation, plus loss of television, radio, and tape player privileges. *Davis*, 345 N.W.2d at 98. Without specifying which provision specifically applies,[2] we held applicants may bring claims challenging prison disciplinary proceedings under what is now chapter 822 when the actions of prison officials involve a substantial deprivation of liberty or property rights. *Id.* at 99. We reasoned "[i]t would be unwieldy to require separate actions and different procedures to review prison disciplinary proceedings depending on the type of punishment imposed." *Id.* Moreover, we stated,

> In many of the prison disciplinary proceedings in which judicial review will be sought, forfeiture of good and honor time will be involved but will be coupled with other means of discipline which can be characterized as a substantial deprivation of liberty or property but which are not expressly mentioned as a subject for review under [chapter 822]. We therefore approve litigating all such claims involving substantial deprivation of liberty or property interests pursuant to the procedures of [chapter 822] . . . .

Id.

In *Maghee*, we held an inmate properly brought a postconviction-relief action pursuant to what is now section 822.2(1)(*e*) to challenge the revocation of his work release after violating a prison rule. *Maghee*, 773 N.W.2d at 230, 235. We reasoned, "There is simply no principled

---

[2]*Davis* implies the proper provision of what is now section 822.2 is section 822.2(1)(*e*). *See Maghee*, 773 N.W.2d at 238 (noting a transfer from the general prison population to segregation, as was the case in *Davis*, is a decision that falls within what is now section 822.2(1)(*e*), which provides postconviction review if the inmate "is otherwise unlawfully held in custody or other restraint").

reason to distinguish a transfer from work release to a secure institution from a transfer from the general prison population to segregation when both are based on rule violations." *Id.* at 237–38. "[W]e think a more manageable and consistent review process results when all transfer decisions are subject to the same postconviction-relief method of review." *Id.* at 238.

In *Pettit*, a prisoner sought to contest the IDOC's decision requiring him to take SOTP. *Pettit*, 891 N.W.2d at 192. After going through the prison adjudicative process, he filed a chapter 17A action. *Id.* We found that "[t]he result of an inmate not participating in SOTP is a loss of the accrual of earned time." *Id.* at 194. We found because the classification could extend his time in prison due to a loss of earned time if he did not participate in SOTP, the proper method to contest the IDOC's classification was through a postconviction-relief action under Iowa Code section 822.2(1)(*f*) (and possibly 822.2(1)(*e*)). *Id.* at 195 & nn.3–4.

Here, Franklin claims the failure to offer SOTP earlier has the effect of extending his incarceration thus affecting his liberty interest. Franklin has the right to pursue his claim under section 822.2(1)(*e*). *See Belk v. Iowa*, ___ N.W.2d ___, ___ (Iowa 2017).

V. Disposition.

We reverse the district court order finding it did not have subject matter jurisdiction to hear Franklin's case. This is not a case concerning subject matter jurisdiction. Rather, it involves authority to hear the case. We further find the district court had authority to hear this case. Accordingly, we remand the case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

All justices concur except Waterman and Zager, JJ., who dissent.

WATERMAN, **Justice (dissenting).**

I respectfully dissent for the reasons set forth in my dissent filed today in *Belk v. State*, ___ N.W.2d ___, ___ (Iowa 2017) (Waterman, J. dissenting).

Zager, J., joins this dissent.