

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Jeffrey W. Ossman,	:	
	:	
Appellant-Appellant,	:	
	:	
v.	:	No. 09AP-517
	:	(C.P.C. No. 08 CVF 16616)
Ohio State Department of Rehabilitation & Correction et al.,	:	(REGULAR CALENDAR)
	:	
Appellees-Appellees.	:	
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D E C I S I O N

Rendered on November 19, 2009

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*Jeffrey W. Ossman, pro se.*

*Richard Cordray, Attorney General, and Ashley D. Rutherford, for appellees.*

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APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Jeffrey W. Ossman is appealing the dismissal of his attempt at an administrative appeal from the action of the Director of the Ohio Department of Rehabilitation and Correction which affirmed the decision of the Rules Infraction Board at Pickaway Correctional Institution.

{¶2} Ossman assigns three errors for our consideration:

Assignment of Error No. 1: The court below erred to the appellant's prejudice by holding that it lacked subject matter jurisdiction over an administrative appeal that the appellant filed pursuant to R.C. 119.12 and R.C. 2505.03.

Assignment of Error No. 2: The court below erred to the appellant's prejudice by holding that the Ohio Rules of Civil Procedure apply to an administrative appeal that the appellant filed pursuant to R.C. 119.12 and R.C. 2505.03.

Assignment of Error No. 3: The court below erred to the appellant's prejudice by overruling appellant's motion for judgment, even though the appellees failed to file a record of administrative proceedings as required by R.C. 119.12 and R.C. 2505.08.

{¶3} Ossman is an inmate at Pickaway Correctional Institution. Apparently he was charged with a rule infraction, and a penalty was assessed against him. He pursued an appeal to Terry J. Collins, Director of the Ohio Department of Rehabilitation and Correction, who affirmed the action taken against Ossman. The letter sent to Ossman by Director Collins reads, in pertinent part, as follows:

Dear Inmate OSSMAN:

Pursuant to your request this office reviewed the above referenced decision of the Rules Infraction Board as Director's designee.

A careful review of the procedural records was conducted. Please be advised that:

- 1) You were validly charged with the proper rule infraction;
- 2) There was substantial compliance with all applicable policies, rules and procedures;
- 3) There was sufficient evidence in the record to support the decision;

4) The penalty assessed was authorized and proportionate to the offense.

Therefore, decision is affirmed.

The letter was signed by Terry J. Collins, Director.

{¶4} Ossman next filed a notice of appeal in the Franklin County Court of Common Pleas. He indicated that he was pursuing an administrative appeal under R.C. 119.12 and under R.C. 2505.03.

{¶5} The Attorney General's Office, on behalf of the Ohio Department of Rehabilitation and Correction, filed a motion asking that Ossman's appeal be dismissed. The trial court granted the dismissal. Ossman now seeks a review of that dismissal.

{¶6} Ohio Adm.Code 5120-9-08 sets forth the procedure for violations of inmate rules of conduct. Inmates are afforded notice, a hearing, the right to call witnesses on their behalf, and the right to appeal an adverse decision. The final step in the process is an appeal to the director or his designee who may affirm, reverse, modify the decision of the Rules Infraction Board or return the matter to the institution for rehearing. Ohio Adm.Code 5120-9-08(Q)(5).

{¶7} Ossman argues in his first assignment of error that, because he underwent a quasi-judicial procedure in having his infraction adjudicated, he has a right of appeal to the Franklin County Court of Common Pleas under R.C. 119.12 or R.C. 2505.03. In arguing he has a right to appeal under R.C. 119.12, Ossman incorrectly cites *Linger v. Ohio Adult Parole Auth.* (Oct. 14, 1997), 10th Dist. No. 97APE04-482 (slip opinion), for the proposition that except for parole hearings, R.C. 119.12 applies to administrative adjudications by the Ohio Department of Rehabilitation and Correction or its director.

{¶8} *Linger* actually states that "while some provisions of R.C. Chapter 119 may apply to OAPA or the Department of Rehabilitation and Correction, it is clear it does not apply to decisions pertaining to parole."

{¶9} On several occasions, this court has reiterated the general rule that the Ohio Department of Rehabilitation and Correction is not an "agency" within the meaning of R.C. 119.01 whose decisions are appealable under R.C. 119.12. In *State v. Brown*, 156 Ohio App.3d 120, 2004-Ohio-558, the court stated as follows:

\* \* \* [T]his court has specifically found that the ODRC is not an agency whose decisions are subject to judicial review by appeal pursuant to R.C. 119.12. Specifically, in *Augustine v. Ohio Dept. of Rehab & Corr.* (1981), 3 Ohio App.3d 398, 399, this court stated as follows:

"In *Plumbers & Steamfitters Commt. v. Ohio Civil Rights Comm.* (1981), 66 Ohio St.2d 192, the Supreme Court, at 193, identified the three categories of state agencies that fall within the definition of an agency as outlined by R.C. 119.01(A). The first category consists of agencies enumerated in the statute. The second category includes the functions of any administrative or executive officer, department, bureau, board or commission specifically made subject to sections 119.01 to 119.13 of the Revised Code. The third category consists of administrative agencies with the authority to issue, suspend, revoke, or cancel licenses. The Ohio Department of Rehabilitation and Correction does not fit in any of these categories. Therefore, it is not an agency whose decisions are subject to judicial review by appeal pursuant to R.C. 119.12."

*Brown* at ¶11.

{¶10} Since *Augustine v. Oh. Dept. of Rehab. & Corr.* (1981), 3 Ohio App.3d 398, some functions of the Ohio Department of Rehabilitation and Correction are subject to R.C. Chapter 119. *Linger* at 5. However, appellate review of a decision concerning

inmate rules infractions is not one of them. Therefore, the common pleas court was correct in dismissing Ossman's appeal pursuant to R.C. 119.12.

{¶11} Appellant also claims that he has a right to appellate review in the common pleas court pursuant to R.C. 2505.03.

{¶12} That section reads in pertinent part:

(A) Every final order, judgment, or decree of a court and, when provided by law, the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality may be reviewed on appeal by a court of common pleas.

{¶13} Ossman overlooks the language in that section providing that an appeal from an administrative officer is only permitted "when provided by law." Ossman has not cited any authority that allows appeal from the action of the Director of the Ohio Department of Rehabilitation and Correction when he reviews a decision by the Rules Infraction Board of a prison.

{¶14} Admittedly, former Ohio Adm.Code 5120-9-07(C)(C) provided that "[t]he decision of the director or his designee shall be final and shall be a bar to further appeal." That provision did not become part of the current Ohio Adm.Code 5120-9-08(Q) that governs the procedure and scope of review in cases reviewed by the director. However, the omission of the former language does not mean that additional layers of appeal have been authorized by the General Assembly or by the rulemaking authority of the Ohio Department of Rehabilitation and Correction.

{¶15} For these reasons, Ossman's first assignment of error is overruled.

{¶16} In his second assignment of error, Ossman cites R.C. 2505.03(C) for the proposition that the common pleas court erred in applying the Ohio Rules of Civil Procedure to the dismissal of his appeal. We disagree.

{¶17} Subject-matter jurisdiction means the power of a tribunal to adjudicate the case. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶11. "Because subject-matter jurisdiction goes to the power of the court to adjudicate the merits of a case, it can never be waived and may be challenged at any time." *Id.*, citing *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 87. Therefore, when the trial court dismissed Ossman's appeal for lack of subject matter jurisdiction, it was exercising the court's inherent power to determine its own jurisdiction. The second assignment of error is overruled.

{¶18} In his third assignment of error, Ossman argues that he should have been awarded judgment in his favor because of the Ohio Department of Rehabilitation and Correction's failure to transmit the record. This assignment of error is rendered moot by our disposition of the first two assignments of error.

{¶19} Based on the foregoing, Ossman's three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

SADLER and KLINE, JJ., concur.

KLINE, J., of the Fourth Appellate District, sitting by assignment in the Tenth Appellate District.

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