

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

ROBERT JEROME BYERS,
Petitioner,

v.

DEPARTMENT OF CORRECTIONS,
Respondent.

Department of Corrections
A174403

Submitted March 4, 2022.

Robert Jerome Byers filed the brief *pro se*.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Christopher Page, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Powers, Judge, and Hellman, Judge.

PER CURIAM

OAR chapter 291, division 105 (June 7, 2018) held valid.

PER CURIAM

Pursuant to ORS 183.400, petitioner challenges the validity of OAR chapter 291, division 105 (June 7, 2018), which encompasses the Oregon Department of Corrections (DOC) rules on “Prohibited Inmate Conduct and Processing Disciplinary Actions.”¹ We do not reach the merits of petitioner’s arguments because we agree with DOC that petitioner’s petition for judicial review is untimely. Under ORS 183.400(6),

“The court shall not declare a rule invalid solely because it was adopted without compliance with applicable rulemaking procedures after a period of two years after the date the rule was filed in the office of the Secretary of State, if the agency attempted to comply with those procedures and its failure to do so did not substantially prejudice the interests of the parties.”

Petitioner did not file his petition until more than two years after the effective date of the challenged rules, and we conclude that the record indicates that DOC attempted to comply with rulemaking procedures and that if it failed to do so, it did not do so in a way that substantially prejudiced petitioner’s interests. Accordingly, ORS 183.400(6) bars petitioner’s challenge.

OAR chapter 291, division 105 (June 7, 2018) held valid.

¹ The challenged rules have since been amended again, effective December 15, 2020. This challenge is to the 2018 version of the rules.