

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 5, 2012

**DONTA S. SMITH v. TENNESSEE DEPARTMENT OF CORRECTIONS,
ET AL.**

**Appeal from the Chancery Court for Hickman County
No. 11CV4450 Timothy L. Easter, Chancellor**

No. M2011-02378-COA-R3-CV - Filed September 21, 2012

Inmate filed a petition for certiorari, seeking a review of a decision of the prison disciplinary review board, affirmed by warden and the Commissioner of the Department of Corrections, finding him guilty of certain prison disciplinary offenses. The trial court dismissed the petition for lack of jurisdiction, finding it was not filed within sixty days of the entry of the order for which review was sought. Finding no error, we affirm the action of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Donta S. Smith, Henning, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Joseph F. Whalen, Associate Solicitor General; Lee Pope, Assistant Attorney General, for the appellees, Tennessee Department of Correction.

OPINION

Petitioner, an inmate at the Turney Center Industrial Complex at the time of the events involved in this case, was found guilty by the prison disciplinary board of conspiracy to violate state law and possession/use of a cell phone. He appealed the decision to the warden of the facility, who affirmed the decision of the disciplinary board; Petitioner appealed the convictions to the Commissioner of the Tennessee Department of Corrections (“TDOC”), who denied the appeal. Petitioner then filed a Petition for a Common Law Writ of Certiorari in the Hickman County Chancery Court.

TDOC filed a Tenn. R. Civ. P. 12.02(1) and (6) motion to dismiss the petition for lack of jurisdiction and failure to state a claim on the grounds that the petition was not filed within the sixty-day limitation period required by Tenn. Code Ann. § 27-9-102; the trial court granted the motion. Petitioner appeals to this Court.

I. Discussion

The dismissal of an action for failure to state a claim presents a question of law for the trial court; accordingly, our review of the trial court's determination is *de novo*, with no presumption of correctness. *Conley v. State*, 141 S.W.3d 591, 594-95 (Tenn. 2004).

Tenn. Code Ann. § 27-9-102 provides that a party seeking certiorari review must file a petition within sixty days of the order or judgment for which review is sought. This statutory requirement is jurisdictional and, unless the petition is timely filed, the court has no power to consider it. *Thandiwe v. Traughber*, 909 S.W.2d 802, 803-04 (Tenn. Ct. App. 1994); *Washshukru Al-Jabbar A'la v. Tenn. Dep't of Corr.*, 914 S.W.2d 914, 916 (Tenn. Ct. App. 1995).

The record in this case shows that the TDOC Commissioner denied Petitioner's appeal on March 1, 2011, and that the petition was filed in Hickman County Chancery Court on May 25, 2011, more than sixty days after the date of the decision for which review was sought. The petition was not timely filed and, as a consequence, the Chancery Court was without subject matter jurisdiction and properly dismissed the petition.

II. Conclusion

For the foregoing reasons, we affirm the judgment of the trial court.

RICHARD H. DINKINS, JUDGE