

IN THE COURT OF APPEALS OF IOWA

No. 0-976 / 09-1853
Filed May 25, 2011

JEREMY MILLER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge.

Jeremy Miller appeals from the district court order dismissing the portion of his application for postconviction relief that challenged the actions of the Iowa Board of Parole. **AFFIRMED.**

Steven J. Drahozal of Drahozal Law Office, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, John R. Lindquist, Assistant Attorney General, Administrative Law Division, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.
Tabor, J., takes no part.

EISENHAUER, J.

Jeremy Miller appeals from the district court order dismissing the portion of his application for postconviction relief challenging the actions of the Iowa Board of Parole. The district court held Miller could only challenge the board's actions under Iowa Code chapter 17A (2007). Miller contends the board's inaction was properly challenged in a postconviction action. We review his claim for correction of errors at law. See *Manning v. State*, 654 N.W.2d 555, 558-59 (Iowa 2002).

In 1992, Miller was convicted of two counts of second-degree sexual abuse and one count of first-degree burglary following his sexual assault of two six-year-old girls. He is currently serving two consecutive twenty-five-year prison terms. The parole board has periodically reviewed Miller's file to determine whether he should be released on parole and each time denied parole.

On April 9, 2007, Miller filed an application for postconviction relief, challenging the constitutionality of the rules and procedures the Iowa Board of Parole has established to make parole decisions. The State filed a motion to dismiss the action on the grounds relief was not available under the chapter 822 postconviction relief provisions; the State alleged chapter 17A was Miller's exclusive remedy to challenge the board's actions and procedures. The district court agreed and on November 12, 2009, dismissed the postconviction challenge to the board's actions.

On appeal, Miller argues the district court erred in dismissing his postconviction action and in support of his contention cites *Maghee v. State*, 773 N.W.2d 228 (Iowa 2009). Valentino Maghee initiated a postconviction relief

action challenging the revocation of his work release, and the district court dismissed it, finding it should have been challenged in an administrative appeal to the Iowa parole board. *Maghee*, 773 N.W.2d at 235. However, our supreme court reversed, holding decisions to transfer an inmate from work release and community-based correctional to a secure institution are reviewable in a postconviction action. *Id.* at 237-38; see also Iowa Code § 822.2(1)(e) (providing postconviction actions may be initiated where “[t]he person’s sentence has expired, or probation, parole, or conditional release has been unlawfully revoked, or the person is otherwise unlawfully held in custody or other restraint”).

Miller’s claim is distinguishable from *Maghee*. Here, Miller is not challenging the board’s decision to revoke parole, which would allow for postconviction relief under section 822.2(1). Rather, Miller challenges the procedures established by the board to carry out its administrative function in considering whether to parole prisoners. Specifically, he complains of the failure to afford him an in-person interview with the board rather than a paper review. The board is an agency within the purview of chapter 17A, *Frazee v. Iowa Bd. of Parole*, 248 N.W.2d 80, 83 (Iowa 1976), and its rules—or violation of—are included in the definition of agency action. Iowa Code § 17A.2(2) (“Agency action’ includes the whole or a part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.”); *Sindlinger v. Iowa State Bd. of Regents*, 503 N.W.2d 387, 389 (Iowa 1993) (noting agency action includes rule making). Accordingly, chapter 17A is

the exclusive means for Miller to challenge the rules and procedures followed by the board in making its parole determination.

Because Miller may only challenge the board's rules and procedures under chapter 17A, we find no error in the district court's dismissal of the portion of his postconviction relief action pertaining to actions or alleged inaction by the parole board.

AFFIRMED.