

**IN THE COURT OF APPEALS OF IOWA**

No. 1-623 / 10-1384  
Filed September 8, 2011

**SPENCER PIERCE,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA, IOWA  
DEPARTMENT OF CORRECTIONS,  
and IOWA BOARD OF PAROLE,**  
Respondents-Appellees.

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Appeal from the Iowa District Court for Polk County, Karen A. Romano,  
Judge.

A postconviction relief applicant contends the district court erred in ruling his prison sentence had not expired and that the court improperly dismissed his claim that the Iowa Board of Parole failed to review him for release. **AFFIRMED.**

Lynn C.H. Poschner of Borseth Law Office, Altoona, for appellant.

Thomas J. Miller, Attorney General, and William A. Hill, Assistant Attorney  
General, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

**VAITHESWARAN, J.**

In 1990, Spencer Pierce was found guilty of first-degree robbery and sentenced to an indeterminate prison term of twenty-five years. Pierce was subsequently found guilty of several other offenses and was ordered to serve many of those sentences concurrently to one another, but consecutively to his robbery sentence.

Nineteen years after his robbery sentence was imposed, Pierce initiated this postconviction relief action, seeking a declaratory judgment that the sentence had been discharged. He also alleged he was denied access to the courts and the Iowa Board of Parole failed to review him for release. The district court granted the State's motion to dismiss the second and third claims but found the claim concerning the discharge of his sentence could not be resolved without an evidentiary hearing. Following a hearing, the court denied that claim. Pierce appealed.

***I. Discharge of Robbery Sentence***

Pierce contends “[t]he trial court should have entered an order ruling that [his] twenty-five year [robbery] sentence has expired and that [his] remaining sentences are Category A sentences for the purposes of Iowa Code section 903A.”

Chapter 903A (2009) addresses the reduction of an inmate's sentence through earned time. The chapter classifies sentences as category “A” or category “B” sentences and provides that inmates serving category “A” sentences accumulate earned time at a different rate than those serving category

“B” sentences. See Iowa Code § 903A.2(1)(a), (b).<sup>1</sup> In pertinent part, category “A” sentences “are those sentences which are not subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12.” *Id.* § 903A.2(1)(a). Category “B” sentences “are those sentences which are subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12.” *Id.* § 903A.2(1)(b). Section 902.12, in turn, enumerates certain felonies that require an individual to serve at least 70% of the maximum term of that particular sentence. *Id.* § 902.12. First-degree robbery is one of these felonies. *Id.* § 902.12(5).

Pierce and the State agree a sentence for first-degree robbery is currently a category “B” sentence. While the State argues first-degree robbery was not a category “B” sentence when the offense was committed, the language of section 902.12 suggests otherwise. For purposes of this appeal, we will assume without deciding that Pierce’s first-degree robbery sentence was a category “B”

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<sup>1</sup> Section 903A.2(1)(a) provides the following formula for reduction of sentences:

An inmate of an institution under the control of the department of corrections who is serving a category “A” sentence is eligible for a reduction of sentence equal to one and two-tenths days for each day the inmate demonstrates good conduct and satisfactorily participates in any program or placement status identified by the director to earn the reduction.

Additionally, “An inmate serving a category ‘A’ sentence is eligible for an additional reduction of sentence of up to three hundred sixty-five days of the full term of the sentence of the inmate for exemplary acts.” Iowa Code § 903A.2(1)(a).

Section 903A.2(1)(b) provides:

An inmate of an institution under the control of the department of corrections who is serving a category “B” sentence is eligible for a reduction of sentence equal to fifteen eighty-fifths of a day for each day of good conduct by the inmate.

sentence, as he contends. There is no dispute that Pierce's remaining sentences are category "A" sentences.

Pierce's specific argument concerning his robbery sentence goes as follows:

It is the intent of the Legislature that the Appellant's Category A and Category B sentences be calculated separately, and that once the Appellant's Category B sentence is served, his sentences should be calculated as Category A sentences.

Pierce hangs his hat on the highlighted portions of two statutes, Iowa Code sections 901.8 and 903A.7. Section 901.8 states in part, "*Except as otherwise provided* in section 903A.7, if consecutive sentences are specified in the order of commitment, the several terms shall be construed as one continuous term of imprisonment." (Emphasis added.) Section 903A.7 states, "Consecutive multiple sentences that *are within the same category* under section 903A.2 shall be construed as one continuous sentence for purposes of calculating reductions of sentence for earned time." (Emphasis added.) He asserts that because his consecutive multiple sentences are not within the same category, they should not have been construed as one continuous term.

The State does not dispute that the sentences are treated differently for purposes of calculating earned time. It asserts, however, that Pierce cannot separately discharge his various sentences, because consecutive sentences are statutorily required to be treated as one continuous term. See *id.* §§ 901.8 (stating "the second or further sentence [is] to begin at the expiration of the first or succeeding sentence"), 903A.7 (stating consecutive multiple sentences are

generally to be construed as one continuous sentence). We agree with the State.

While section 901.8 appears to recognize a possible exception to the continuous term rule, the statute to which it makes reference, section 903A.7, does not create such an exception. Section 903A.7 simply states that for purposes of calculating earned time reductions, the court shall look at sentences within the same category. Nothing in section 903A.7 indicates that an inmate can separately discharge one sentence of a continuous term comprised of several consecutive sentences. See *Thompson v. State*, 524 N.W.2d 160, 162 (Iowa 1994) (“Treating consecutive sentences as separate sentences for disciplinary detention purposes would allow each inmate’s accumulated disciplinary detention to be effectively expunged at the end of each separate sentence. Thus, if inmates accumulate disciplinary detention beyond the term of one of their first consecutively served sentences, the imposition of additional disciplinary detention during that term would not deter them from engaging in improper conduct. The State’s goal of preserving order would be jeopardized, in conflict with the purposes of section 901.8.”).

We conclude Pierce’s one continuous term of imprisonment has not expired. Therefore, he cannot obtain the relief he seeks. See Iowa Code § 822.2(1)(e) (enumerating when postconviction relief is available, including when “[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”). The district court did not err in denying this claim.

## **II. Ineffective Assistance of Counsel**

Pierce also claims his postconviction attorney was ineffective in two regards. First, he asserts that counsel “failed to put any evidence before the court showing a current computation of [his] time served and/or credit earned toward discharge of the 1990 first-degree robbery conviction.” This argument hinges on the success of Pierce’s request to have his robbery sentence discharged. As we have found that argument unpersuasive, we conclude this argument must also fail.

Second, Pierce claims that his postconviction attorney failed to cite chapter 903A and failed to argue that it applied. This is essentially a rehash of the discharge issue we addressed on the merits. We find it unnecessary to again address it under an ineffective-assistance-of-counsel rubric.

## **III. Board of Parole**

The district court summarily dismissed Pierce’s claim that the Iowa Board of Parole failed to review him for release. The court reasoned as follows:

The petitioner’s final claim, that the IBOP has denied him due process by failing to grant him review, is not a proper claim under chapter 822. The IBOP’s actions are administrative actions governed by chapter 17A. The Petitioner is required to exhaust his administrative remedies before seeking review in the district court. After exhausting his administrative remedies, if still aggrieved, the Petitioner must then bring a Petition for Judicial Review under chapter 17A. Chapter 822 gives the court no jurisdiction to hear this claim at this time.

The Iowa Administrative Procedure Act generally provides the exclusive means for obtaining judicial review of agency action. *Id.* § 17A.19. However, in *Maghee v. State*, 773 N.W.2d 228, 242 (Iowa 2009), the court held that chapter

17A was not the exclusive means for raising a claim that the department of corrections wrongly revoked Maghee's work release. The court concluded that postconviction review was available, as Maghee was asserting he was "unlawfully held in custody or other restraint." *Maghee*, 773 N.W.2d at 238, 241; see also Iowa Code § 822.2(1)(e).

Pierce acknowledges the board is a state agency governed by the Iowa Administrative Procedure Act but argues that *Maghee* authorizes a challenge to the board's inaction under chapter 822.

Pierce appears to have brought his postconviction relief application under section 822.2(1)(e), which affords relief 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." While this is the same provision invoked by Maghee, Pierce, unlike Maghee, did not fall within its ambit. As noted, Maghee asserted that the department of corrections wrongly revoked his work release, a claim that falls squarely within the language of section 822.2(1)(e). See *Maghee*, 773 N.W.2d at 238. Pierce, in contrast, alleged that one sentence of his multiple consecutive sentences was discharged, an allegation that is not consistent with the continuous term rule of section 901.8. Pierce also did not provide any evidence that he is unlawfully being held in custody or other restraint. Indeed, he concedes he has yet to complete the balance of his prison term. For that reason section 822.2(1)(e) does not apply to him and he cannot avail himself of postconviction review.

We conclude chapter 17A furnished the exclusive means of challenging the Board's action or inaction. Accordingly, we discern no error in the district court's dismissal of this claim.

***IV. Disposition***

We affirm the denial of Pierce's application for postconviction relief with respect to the discharge-of-sentence claim and we affirm the district court's grant of the State's motion to dismiss the board of parole claim.

**AFFIRMED.**