

IN THE COURT OF APPEALS OF IOWA

No. 1-657 / 10-1084
Filed September 8, 2011

JOEL McKEAG,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Marshall County, Michael J. Moon,
Judge.

Postconviction relief applicant appeals the dismissal of his complaint.

AFFIRMED.

Kathryn J. Mahoney, Waterloo, for appellant.

Thomas J. Miller, Attorney General, John R. Lundquist, Assistant Attorney
General, and Jennifer Miller, County Attorney, for appellee State.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

EISENHAUER, P.J.

Joel McKeag pled guilty to sexual abuse in the second degree and burglary in the first degree for crimes he committed on February 5, 1993. In August 1993, he was sentenced to a term of imprisonment of twenty-five years on each count, to be served consecutively.

On April 18, 2007, McKeag filed a pro se application for postconviction relief alleging the Iowa Board of Parole had violated the Ex Post Facto Clause of the Constitution by giving him a case file review rather than an in-person interview in determining whether to grant him parole. Thereafter, McKeag's counsel filed a supplemental application for postconviction relief, further alleging the parole board's use of case file reviews in lieu of personal interviews violated McKeag's procedural due process rights. McKeag's subsequent request to take multiple depositions at State expense was denied by the district court. McKeag's interlocutory appeal was unsuccessful; we affirmed the district court. *McKeag v. State*, No. 08-0752 (Iowa Ct. App. July 22, 2009).

In February 2010, McKeag recast his application, again seeking postconviction relief pursuant to Iowa Code chapter 822 (2009). The State filed a motion to dismiss asserting the appropriate forum to review the "interview versus file review" actions of the Board of Parole is under the Iowa Administrative Procedure Act, Iowa Code chapter 17A. After hearing, the district court dismissed McKeag's application for postconviction relief, ruling:

The Iowa Court of Appeals in a published case, *Taylor v. State*, 752 N.W.2d 24, 30 (Iowa Ct. App. 2008) has held that the Board of Parole change from in-person interviews to case file reviews does not violate the ex post facto clause of the Constitution. That case did not, however, discuss the mechanism

by which an aggrieved party may bring his or her cause of action to the attention of the trial court in the first place. That is the precise issue here.

After the Iowa Supreme Court's decision in *Maghee v. State*, 773 N.W.2d 228 (Iowa 2009), was decided on October 9, 2009, [McKeag] argues that Iowa Code chapter 822 is a proper vehicle for seeking redress in cases such as his. A careful review of the *Maghee* decision does not support [McKeag's] argument.

In *Maghee*, [the] applicant sought review of a decision of the Iowa Department of Corrections to terminate his work release status and place him back in prison. The [*Maghee*] Court determined that both Iowa Code chapter 17A and Iowa Code chapter 822 were appropriate for seeking redress, but then determined that as between the two code chapters, Iowa Code chapter 822 was more appropriate. The Court found that Iowa Code section 822.1(e) (2009) specifically provided a statutory remedy for *Maghee's* complaint. ["The person's sentence has expired, or probation, parole, or conditional release has been unlawfully revoked . . ." Iowa Code § 822.2(1)(e).] There is no such statutory peg in chapter 822 for review of Parole Board action. *Maghee* is therefore distinguishable from the case brought by [McKeag]. Iowa Code chapter 822 provides no relief and, therefore, the exclusive mechanism for attacking the Parole Board action in this case is through Iowa Code chapter 17A.

Postconviction proceedings are civil actions, and we review for correction of errors at law. Iowa R. App. P. 6.907. The parole board is a state agency governed by the Iowa Administrative Procedures Act, chapter 17A. *Frazer v. Iowa Bd. of Parole*, 248 N.W.2d 80, 82 (Iowa 1976); see also Iowa Code ch. 17A. Under chapter 17A, agency action includes the failure to act, the exercise of agency discretion, or the failure to perform any agency duty. Iowa Code § 17A.2(2). Therefore, the board's alleged failure to personally interview McKeag is an agency action.

By its terms, the judicial review provisions of chapter 17A are "the *exclusive means* by which a person . . . adversely affected by agency action may seek judicial review of such agency action" except as "expressly provided

otherwise by another statute referring to [chapter 17A] by name.” *Id.* § 17A.19 (emphasis added); *Johnson v. Dep’t of Corr.*, 635 N.W.2d 487, 488 (Iowa Ct. App. 2001) (“The district court is deprived of jurisdiction over the case if administrative remedies are not exhausted.”). Chapter 822, governing postconviction actions, does not expressly negate the applicability of chapter 17A. See Iowa Code ch. 822. We agree with the district court’s analysis of the *Maghee* decision. See *Maghee*, 773 N.W.2d at 240 (stating “legislature provided for postconviction review of specified claims, some of which could only arise from agency action by the department [of corrections]”). Therefore, the chapter 17A judicial review procedures are McKeag’s exclusive means of judicial review.

We find no error in the district court’s determination that McKeag’s action is not properly brought under chapter 822. McKeag is required to challenge the parole board’s agency action through the board’s administrative appeals process. After he has exhausted his administrative appeals, McKeag may seek judicial review. See *Johnson*, 635 N.W.2d at 489 (requiring exhaustion of administrative appeals by prisoner raising constitutional challenges based on parole board’s denial of prisoner’s request to appear in person); see also *Shell Oil Co. v. Bair*, 417 N.W.2d 425, 430 (Iowa 1987) (holding factual record to resolve constitutional challenges should be developed before the agency).

AFFIRMED.