

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO AP-02-51

SKC - 157 - 10/20/2002

JOHN FORBIS,

Petitioner

v.

ORDER ON MOTION

JEFFREY MERRILL,
WARDEN, MAINE
STATE PRISON,

**DONALD L. GARBRECHT
LAW LIBRARY**

Respondent

NOV 5 2002

This matter comes before the court on the petitioner's petition for judicial review of final agency action pursuant to M.R. Civ. P. 80(C). Mr. Forbis seeks review of a decision made by prison officials on June 6, 2000, as the result of which he lost 20 days of earned good time credits for failing a urinalysis test. According to the certificate of the Classification Officer for the Maine State Prison, the June 6, 2000 disciplinary action was the highest level of review in the disciplinary process.

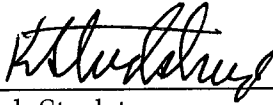
The respondent has filed a motion to dismiss the petition as being untimely filed. According to the statute governing such judicial review of final agency action, "The petition for review shall be filed within 30 days after receipt of notice if taken by a party to the proceeding of which review is sought." 5 M.R.S.A. § 11002(3). The petitioner argues that the June 2000 decision was not "final" because under prison regulations it is possible that the good time which had been withdrawn could be reinstated at the end of the sentence. The court does not agree. The process for reinstating withdrawn good time requires a separate application by the inmate and is a new and different proceeding, even though it may concern the same good time. Therefore, the court

concludes as a matter of law that if there was an appealable final agency decision in this case, it was the decision of June 6, 2000, and the present appeal filed on August 14, 2002, must be dismissed as untimely.

The entry will be:

Petition DISMISSED.

Dated: October 30, 2002



S. Kirk Studstrup
Justice, Superior Court

Date Filed 8/14/02 Kennebec Docket No. AP02-51
County

Action 80C Appeal

John Forbis, pro se
807 Cushing Rd., Warren ME 04864

Jeffrey Merrill
vs.

Plaintiff's Attorney

Defendant's Attorney

Christopher Mann, AAG
State House Sta 6
Augusta Maine 04333

Date of
Entry

8/16/02	Petition for Judicial Review of Final Agency Action with attachments, filed. s/J. Forbis, Pro se Petitioner. (filed 8/14/02)
-----	Application of Plaintiff to Proceed Without payment of Fees and Financial Affidavit, filed. s/J. Forbis, pro se petitioner. (filed 8/14/02)
8/23/02	Copy of memorandum regarding prisoners account, filed.
8/26/02	Certificate of Prisoner's Account, filed. (attached trust account statement)
8/28/02	ORDER ON APPLICATION TO PROCEED WITHOUT FEES, Marden, J. (dated 8/26/02) Copy mailed to Pltf.
9/6/02	Motion for Temporary Restraining Order, filed. s/John Forbis, Pro Se
9/9/02	Statement of Pro Se Plaintiff, John Forbis. Estimated time for hearing is 1 hour., filed. s/John Forbis, Pro Se Copy of letter, filed.
9/18/02	Notice and Acknowledgement of Receipt of Summons and Complaint, filed. s/Forbis. Service made on Christopher Mann, AAG. on 9/11/02.
9/27/02	Motion in Opposition to Plaintiff's Motion for Temporary Restraining Order, filed. s/Mann, Esq. Certificate of Joanna Kinney, filed. s/Kinney Proposed Order, filed. Motion to Dismiss, filed. s/Mann, Esq. Certificate of Joanne Kinney, filed. s/Kinney Proposed Order, filed
10/3/02	Plaintiff's Objection to Defendant's Motion to Dismiss Rule 80 Petition and Temporary Restraining Order, filed. s/Forbis, Pro Se (attached exhibit A&B)
10/17/02	Letter from Pltf. John Forbis regarding hearing date and clarification. Copy of Writ prepared by John Forbis.
10/24/02	WRIT OF HABEAS CORPUS ISSUED, Studstrup, J. Attested copies to KSO.