

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID RUBINGH,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED

August 20, 1996

No. 176976

LC No. 93-74275-AA

Before: McDonald, P.J., and Markman and C. W. Johnson\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a January 25, 1994, order dismissing his petition for judicial review of the agency's decision that he was guilty of a major misconduct. The trial court dismissed plaintiff's petition finding plaintiff failed to exhaust his administrative remedies prior to filing the instant petition for review. We affirm.

Plaintiff argues judicial review should be allowed before exhausting administrative remedies. However, it is well settled that one must exhaust administrative remedies within the agency before seeking judicial review. E.g., *Michigan Supervisors Union OPEIU Local 512 v Dep't of Civil Service*, 209 Mich App 573; 531 NW2d 790 (1995); *Mollett v City of Taylor*, 197 Mich App 328; 494 NW2d 832 (1992).

Prisoner misconduct hearings are governed by MCL 791.251 *et seq.*; MSA 28.2320(51) *et seq.* Section 55 provides in pertinent part as follows:

(1) A prisoner aggrieved by a final decision or order of a hearings officer shall file a motion or application for rehearing in order to exhaust his or her administrative remedies before seeking judicial review of the final decision or order.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

(2) Within 60 days after the date of delivery or mailing of notice of the decision on the motion or application for the rehearing, if the motion or application is denied or within 60 days after the decision of the department or hearing officer on the rehearing, a prisoner aggrieved by a final decision or order may file an application for review in the circuit court in the county where the petitioner resides or in the circuit court for Ingham County. (emphasis added).

Thus, under this provision, a prisoner must apply for rehearing before petitioning for judicial review in circuit court. Plaintiff argues that prisoners should be able to obtain leave to petition for judicial review before seeking rehearing within the agency. This precise issue has been addressed and rejected in *Seaton-El v Dept of Corrections*, 184 Mich App 454; 458 NW2d 910 (1990). In that case, the plaintiff prisoner had not yet received a response to his motion for rehearing before petition the circuit court for review. *Id.* At 455-456. This Court held that the action in circuit court was premature because the plaintiff had failed to exhaust his administrative remedies. *Id.*

Likewise, plaintiff brought the instant action on March 10, 1993, prior to receiving a response to his January 31, 1993, request for rehearing. Therefore, the court correctly dismissed the case because plaintiff had failed to exhaust his administrative remedies under MCL 791.255; MSA 28.2320(55).

Moreover, this issue is moot because defendant reversed plaintiff's misconduct charge on December 7, 1993. An issue is moot when the occurrence of an event renders it impossible for the court to fashion a remedy. *People v Mansour*, 206 Mich App 81; 520 NW2d 646 (1994). It would be impossible for this Court to grant plaintiff a remedy, because defendant reversed plaintiff's misconduct charge on rehearing during the course of the lower court proceedings.

Finally the court properly granted defendant's motion to tax costs pursuant to MCR 2.625. Although the language of the order improperly refers to attorney fees, no such fees were requested by defendant and the amount awarded corresponds to the requested authorized costs. MCL 600.2441; MSA 27A.2441 and MCL 600.2528; MSA 27A.2528. The trial court was not required to make a determination of plaintiff's financial status before taxing costs. "[O]nce admitted to the courthouse, an indigent person, like any other litigant, can be liable for taxed costs as a nonprevailing party." *Wells v Dep't of Corrections*, 447 Mich 415, 420; 523 NW2d 217 (1994).

Affirmed.

/s/ Gary R. McDonald  
/s/ Stephen J. Markman  
/s/ Charles W. Johnson