

RICHARD BROOKS VS. DEPARTMENT OF CORRECTION

Docket:	20-P-447
Dates:	February 3, 2021 – March 22, 2021
Present:	Neyman, Shin, & Singh, JJ.
County:	Suffolk
Keywords:	Practice, Civil, Action in nature of certiorari, Statute of limitations. Limitations, Statute of. Imprisonment, Enforcement of discipline.

Civil action commenced in the Superior Court Department on April 5, 2019.

A motion to dismiss was heard by Debra A. Squires-Lee, J.

Matthew Disler (Joel H. Thompson also present) for the plaintiff.

Amanda M. Chaves for the defendant.

SHIN, J. The plaintiff brought an action in the nature of certiorari challenging a final disciplinary decision of the Massachusetts Department of Correction (department). On the department's motion, a Superior Court judge dismissed the complaint as untimely under the sixty-day statute of limitations governing certiorari actions. See G. L. c. 249, § 4. The plaintiff appeals, arguing that the judge erred by calculating the limitations period from the date the final decision was dated and signed, rather than the date it was served. We agree and therefore reverse.

In September 2018, while the plaintiff was incarcerated at the North Central Correctional Institution at Gardner (NCCI-Gardner), a correction officer issued a disciplinary report alleging that the plaintiff was participating in "an unsanctioned program" called "Fruits of Islam." Following a disciplinary hearing, a hearing officer found the plaintiff "guilty" of two offenses. In January 2019, the plaintiff appealed to the superintendent of NCCI-Gardner.

On February 4, 2019, the department served on the plaintiff and his student legal representative a four-page "Results of Appeal" form document indicating that the superintendent had denied the plaintiff's appeal. On each page of the document was a header with the date, "20190204," and the document ended with a notice that "[a] copy of this decision [was] served on the inmate" on "20190204." Within the body of the document, however, was a line

identifying the "Date of Decision" as "20190201." This was also the date that appeared next to the superintendent's electronic signature.

The plaintiff filed his certiorari complaint on April 5, 2019. Although this was exactly sixty days after February 4, 2019, the department moved to dismiss the complaint as untimely, arguing that the limitations period should be calculated from February 1, 2019. The judge agreed, finding the "Date of Decision" to be dispositive, without addressing the fact, undisputed by the department, that the decision was not served or otherwise communicated to the plaintiff until February 4, 2019.

We review a judge's allowance of a motion to dismiss *de novo*, see *Harrington v. Costello*, 467 Mass. 720, 724 (2014), not for an abuse of discretion as the department argues. The certiorari statute provides that an "action shall be commenced within sixty days next after the proceeding complained of." G. L. c. 249, § 4. "The term 'proceeding complained of' refers to 'the last administrative action' taken by an agency." *Committee for Pub. Counsel Servs. v. Lookner*, 47 Mass. App. Ct. 833, 835 (1999), quoting *Pidge v. Superintendent, Mass. Correctional Inst., Cedar Junction*, 32 Mass. App. Ct. 14, 17-18 (1992). We conclude here that the last administrative action taken by the department was the issuance of the superintendent's decision, which occurred no earlier than February 4, 2019, when the decision was served.^[1] The department regulation governing "Appeal Procedures" -- which provides that "[t]he Superintendent shall normally decide an appeal within thirty (30) days of its receipt and notify the inmate in writing of the decision with supporting reasons," 103 Code Mass. Regs. § 430.18(2) (2018)^[2] -- comports with our conclusion.

While not contesting that the issuance of the superintendent's decision was the operative event, the department claims that this occurred on February 1, 2019, when the superintendent "memorialized [the] decision with her signature." But as the department acknowledges, February 4, 2019, was the date that the decision was moved out of the "internal record keeping system." The department cites no controlling authority, and we are aware of none, supporting the proposition that a statute of limitations governing judicial review of an agency decision begins to run before the agency has issued notice of the decision, by some means, to the affected parties. The department's position is untethered from "the traditional purpose[] of statutes of limitations," which is to "require the assertion of claims within a specified period of time after notice of the invasion of legal rights." *Urie v. Thompson*, 337 U.S. 163, 170 (1949). It would also allow agencies to unilaterally shorten the limitations period by withholding notice of their decisions. Indeed, under the department's rationale, agencies could deprive parties of all opportunity to seek certiorari review through the expedient of waiting for the sixty days to expire

before issuing notice. This is illogical, and we decline to construe the statute in such a manner. See *DiFiore v. American Airlines, Inc.*, 454 Mass. 486, 490-491 (2009). Cf. *Department of Revenue v. Mason M.*, 439 Mass. 665, 673 (2003) ("separate document" and entry requirements of Mass. R. Civ. P. 58 [a], as amended, 371 Mass. 908 [1977], designed to avoid confusion as to start of appeal period).

Lookner, 47 Mass. App. Ct. 833, on which the department heavily relies, is neither controlling nor persuasive on the issue before us. The issue there was whether the plaintiff's certiorari complaint, filed more than sixty days after he received notice of the agency's final decision, was nonetheless timely because it was filed within sixty days of receipt of the full written findings underlying the decision. See *id.* at 836. We concluded that the clock started running either on "the date the hearing officer issued the final decision . . . or, at the latest, . . . when [the plaintiff] received notice of that final decision." *Id.* at 837. Because the complaint was untimely measured by either date, we affirmed its dismissal. See *id.*

Contrary to the department's characterization, *Lookner* does not stand for the proposition that an agency decisionmaker's mere signing of a decision triggers the start of the limitations period. The dispute in *Lookner* was whether the operative event was the issuance of the final decision or the issuance of the supporting findings; it was in this context that we observed that the certiorari statute does "not require 'notice' or 'receipt' of anything, much less findings." *Lookner*, 47 Mass. App. Ct. at 837. *Lookner* is not pertinent to the question in this case, which is whether the limitations period began running even before the department had taken steps to notify the plaintiff that the superintendent had rendered a final decision. We conclude that it did not and that the plaintiff's complaint, filed within sixty days of service of the final decision, was therefore timely and should not have been dismissed.

Judgment reversed.

footnotes

[1]We need not, and do not, decide whether the limitations period ran from the date of service of the decision or from the date of receipt. It is undisputed in any event that the plaintiff received the decision on the same day it was served.

[2]We cite the version of the regulation in effect at the time of the disciplinary hearing. The current version is identical in all material respects. See 103 Code Mass. Regs. § 430.18(2) (2019