



## OPINION

This is an appeal by petitioner/appellant, Phillip G. Debord, from the decision of the chancery court dismissing his petition for review or, in the alternative, for writ of certiorari. The petition asked the court to review a decision of the Tennessee Board of Paroles (“the Board”) which denied Petitioner parole. The facts out of which this matter arose are as follows.

Petitioner is an inmate of the Tennessee Department of Corrections. The Board conducted a parole hearing for Petitioner on 4 October 1994. The hearing officer did not recommend Petitioner for parole for the following reasons: 1) the seriousness of his offense; 2) he constituted a high risk for re-offending if released; and 3) he should complete the sex offender program. The Board accepted this recommendation and sent a final parole hearing disposition notice to Petitioner on 15 November 1996.

Petitioner then sought a declaratory order from the Board.<sup>1</sup> A staff attorney for the Board responded to Petitioner’s request by letter dated 2 April 1996. The response characterized the contents of the response as an answer to Petitioner’s revised Petition and consisted of a list of cites with no explanation.

Petitioner filed his petition for writ of certiorari on 29 April 1996. The gravamen of the petition was the Board denied Petitioner parole based upon the fact he had not completed a sex offender program. Petitioner insisted this violated a stipulation entered into by the Board in *Dean v. McWherter*, No. 1:90-0027 (M.D. Tenn. 3 June 1994). Petitioner contended he was entitled to judicial review under section 4-5-322 of the Uniform Administrative Procedures Act (“UAPA”)<sup>2</sup> and he was entitled to a declaratory judgment.<sup>3</sup> He claimed the response from the staff

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<sup>1</sup> The record does not include a copy of the request for declaratory order.

<sup>2</sup> Tennessee Code Annotated section 4-5-322 provides, in pertinent part, as follows: “A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review.” Tenn. Code Ann. § 4-5-322 (Supp. 1996).

<sup>3</sup> Tennessee Code Annotated section 4-5-224 provides, in pertinent part, as follows:  
(a) The legal validity or applicability of a statute, rule, or order of an agency to specified circumstances may be determined in a suit for declaratory judgment in

attorney constituted a final order for the purposes of section 4-5-322 and a declaratory order for the purposes of section 4-5-224. Finally, Petitioner requested a common law writ of certiorari claiming the Board acted illegally and arbitrarily.

The Board moved to dismiss the petition for lack of subject matter jurisdiction. The chancery court made the following findings: 1) the court lacked jurisdiction under the UAPA because Tennessee Code Annotated section 4-5-106(c) exempts the Board from the judicial review provisions of the UAPA<sup>4</sup>; 2) Petitioner's failure to file within sixty days of the Board's decision to deny him parole precluded any review under a common law writ of certiorari pursuant to Tennessee Code Annotated section 27-9-102; 3) the response of the staff attorney was neither a declaratory order nor a final order of the Board; and 4) the declaratory order provisions of the UAPA do not apply to the Board pursuant to Tennessee Code Annotated section 4-5-106(c). Thereafter, Petitioner filed a notice of appeal and presented the following issues:

- I. Whether the chancery court erred in dismissing the petition for review because it was not timely filed.
- II. Whether the board of paroles acted illegally, arbitrarily and abused its discretion in denying the parole of the appellant based, at least in part, on the fact that he had not completed a sex-offender abuse treatment program when, in fact, he entered the department of correction before said program was instituted and whether such denial was in violation of the state's own stipulation entered by it in the United States District Court for the Middle District of Tennessee.

Petitioner conceded in his brief that the declaratory judgment and judicial review provisions of the UAPA do not apply to the Board. Nevertheless, he argued the response from the staff attorney was a declaratory judgment and was the Board's final order from which the sixty day filing deadline for common law writs of certiorari began to run.

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the chancery court of Davidson County . . . .

(b) A declaratory judgment shall not be rendered . . . unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order.

*Id.* § 4-5-224(a),(b) (1991).

<sup>4</sup> Tennessee Code Annotated section 4-5-322 is part of the judicial review provisions.

“Common law certiorari is available where the court reviews an administrative decision in which an agency is acting in a judicial or quasi-judicial capacity.” *Davison v. Carr*, 659 S.W.2d 361, 363 (Tenn. 1983). The scope of review under a common law writ of certiorari is limited to the record and to a determination of whether there is any material evidence to support the agency’s findings or whether the administrative body has exceeded its jurisdiction or acted illegally or arbitrarily. *Id.*; *Spunt v. Folwinkle*, 572 S.W.2d 259, 265 (Tenn. App. 1978).

Courts may review an order of the Board pursuant to a common law writ of certiorari. *Thandiwe v. Traugher*, 909 S.W.2d 802, 803 (Tenn. App. 1994). A party seeking review must file a petition for a writ of certiorari within sixty days of the entry of the order at issue. *Id.*; Tenn. Code Ann. § 27-9-102 (1980 & Supp. 1996). This requirement is jurisdictional. *Thandiwe*, 909 S.W.2d at 804. “The failure to file within the statutory time limits results in the Board’s decision becoming final, and once the decision has become final, the Chancery Court is deprived of jurisdiction.” *Id.*

The chancery court found: “The decision of the Board of Paroles was rendered on October 18, 1995 and became final on December 18, 1995. Therefore, the petition filed on April 29, 1996 was not timely filed.” Allowing Petitioner every conceivable benefit of the doubt, it is apparent the critical date is determined by the document with which Petitioner takes issue, the final parole hearing disposition. The Board insists the final parole hearing disposition which is stamped 15 November 1995 is the final order or judgment. We agree. Thus, the date for determining whether Petitioner’s writ of certiorari was timely filed would be 15 January 1996, sixty days beyond the date of the final parole hearing disposition. The petition was not filed until 29 April 1996. Therefore, the chancellor correctly determined the petition was not timely filed and properly dismissed the petition on the basis that the court lacked jurisdiction.

We can not agree with Petitioner’s contention that the sixty days did not begin to run until 2 April 1996, the date of the response from the staff attorney. It is clear that the response is neither a declaratory nor a final order. The response is not designated as a declaratory order despite the fact that a declaratory order is what

petitioner was requesting. Moreover, the response was only signed by a member of the legal staff. It was not signed by any of the Board's members. Finally, it is clear from the letter that the staff attorney was simply addressing Petitioner's concerns as expressed in his request for a declaratory judgment. This letter does not constitute any type of order or judgment of the Board.

Therefore, it results that the judgment of the chancellor is in all things affirmed, and the cause is remanded to the chancery court. Costs on appeal are taxed to the petitioner/appellant, Phillip D. Debord.

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SAMUEL L. LEWIS, JUDGE

CONCUR:

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HENRY F. TODD, P.J., M.S.

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BEN H. CANTRELL, J.