

Cite as 2022 Ark. 5
SUPREME COURT OF ARKANSAS
No. CV-19-124

MALIK MUNTAQIM

APPELLANT

V.

WENDY KELLEY, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION, ET AL.

APPELLEES

Opinion Delivered: January 20, 2022

PRO SE APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FOURTH
DIVISION
[NOS. 60CV-18-7123; 60CV-18-7124]

HONORABLE HERBERT WRIGHT,
JUDGE

AFFIRMED.

RHONDA K. WOOD, Associate Justice

Malik Muntaqim filed a petition to proceed in forma pauperis in circuit court alleging that he was entitled to judicial review of a disciplinary action against him. He argues in his complaint that the Arkansas Department of Correction (ADC) violated his due-process rights. The circuit court denied Muntaqim's petition after finding that he failed to state a colorable cause of action. He then appealed to this court. We now affirm the denial of his petition to proceed in forma pauperis.

Muntaqim assaulted and punched a correctional officer, Aaron Hisek, and had access to a cell phone. Following a disciplinary hearing, the ADC found Muntaqim guilty of the disciplinary violations and transferred him to the Varner Supermax Unit. Muntaqim appealed these findings to Director Kelley who issued a letter decision and upheld the finding of guilt.

Muntaqim filed his petition to proceed in forma pauperis with a corresponding petition for judicial review in circuit court. He alleged various procedural due-process deficiencies both at the hearing and during the review process. Muntaqim's underlying complaint rested on the Administrative Procedure Act (APA), codified at Arkansas Code Annotated sections 25-15-201 to -220 (Repl. 2014 & Supp. 2021).

The circuit court found Muntaqim did not have a colorable cause of action because, it held, an inmate is not entitled to judicial review of administrative actions taken by the ADC. *See* Ark. Code Ann. § 25-15-212(a) (Supp. 2021) (stating that in cases of adjudication, any person may seek judicial review of an administrative action except an inmate under sentence to the custody of the ADC). The court therefore denied Muntaqim's petition to proceed in forma pauperis.

This court reviews a denial of a petition to proceed in forma pauperis for an abuse of discretion. *Clemmons v. Kelley*, 2021 Ark. 47, 618 S.W.3d 128. Arkansas Rule of Civil Procedure 72 (2019) governs a decision to grant or deny a petition to proceed in forma pauperis in a civil case. *Rea v. Kelley*, 2018 Ark. 329, 559 S.W.3d 746. In civil matters, Rule 72(c) conditions the right to proceed in forma pauperis on indigency and the circuit court's satisfaction that the alleged facts show "a colorable cause of action." A colorable cause of action is a legitimate claim that may be reasonably asserted given the facts presented and the current law or a reasonable and logical extension or modification of it. *Clemmons*, 2021 Ark. 47, 618 S.W.3d 128.

Judicial review of an administrative decision is available to an inmate if the petitioner raises a constitutional question sufficient to assert a liberty interest and alleges a fact-based constitutional violation. *Muntaqim v. Kelley*, 2019 Ark. 240, 581 S.W.3d 496. Even so, the petition must be filed timely: after being served with the agency's final decision, the petitioner must file an appeal within thirty days. See Ark. Code Ann. § 25-15-212(b)(1). When a petition is filed outside the thirty-day window, it is untimely, and the petitioner cannot seek relief under the APA. *Day v. Minor*, 2015 Ark. 266 (per curiam).

Here, the record shows that Kelley issued the final agency decision on August 17, 2018. Muntaqim submits he received notice by August 24, 2018. Thus, his petition for judicial review was due on Monday, September 24, 2018. But Muntaqim did not file his petition until October 11, 2018. This filing was untimely.

The circuit court's finding that Muntaqim did not have a colorable cause of action under the APA was correct, but this court reaches that conclusion on a different basis. This court will affirm the circuit court's decision when it reached the right result albeit for a wrong reason. *Noble v. State*, 2019 Ark. 284, 585 S.W.3d 671. Here, the circuit court did not abuse its discretion when it denied Muntaqim's petition in an action where the record is clear that the petition was untimely. Muntaqim therefore had no colorable cause of action because the APA precludes relief in untimely appeals. Muntaqim had no basis to proceed in forma pauperis, and we affirm the circuit court's order denying Muntaqim's petition.

Affirmed.

Malik Muntaqim, pro se appellant.

Leslie Rutledge, Att’y Gen., by: Sammie P. Strange, Jr., Ass’t Att’y Gen., for appellee.