

NOTICE
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2011 IL App (4th) 110068-U

Filed 11/2/11

NO. 4-11-0068

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JACK A. BEASLEY,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
BRETT A. KLINDWORTH and CAROL A. McBRIDE,)	No. 10MR42
Defendants-Appellees.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff failed to state a claim for *mandamus* relief, the trial court did not err in granting defendants' motion to dismiss.

¶ 2 In April 2010, plaintiff, Jack A. Beasley, filed a *pro se* petition for *mandamus* against defendants, Brett A. Klindworth and Carol A. McBride. In June 2010, defendants filed a motion to dismiss, which the trial court granted.

¶ 3 On appeal, plaintiff argues the prison adjustment committee failed to properly conduct the disciplinary hearing thereby violating his due-process rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2010, plaintiff, an inmate at Pontiac Correctional Center, filed a *pro se* petition for *mandamus* against defendants. Plaintiff stated he was serving five years in prison, and defendants were members of the adjustment committee at Pinckneyville Correctional Center.

Plaintiff generally alleged the adjustment committee violated due process because (1) he was not given 24 hours' notice prior to the adjustment-committee hearing; (2) witnesses were improperly excluded; (3) the adjustment committee lacked impartiality; (4) he was denied assistance in preparing for the hearing; and (5) he did not receive a written statement of the reasons for being found guilty. Plaintiff sought an order of *mandamus* to expunge his disciplinary offenses. Plaintiff did not attach any exhibits to his petition.

¶ 6 In June 2010, defendants filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)), arguing the disciplinary hearings in question were conducted in accordance with due-process principles and plaintiff did not have a clear right to *mandamus*. Attached to the motion were three summary reports from the adjustment committee. The reports indicated plaintiff received disciplinary tickets based on three separate incidents—one occurring on August 17, 2009, and the other two on August 19, 2009. The offenses took place at Shawnee Correctional Center, while the hearings before the adjustment committee took place at Pinckneyville.

¶ 7 As to the August 17, 2009, incident, defendant was charged with damage or misuse of property, dangerous communications, unauthorized movement, and abuse of privileges. The report indicated no witnesses were requested, plaintiff appeared, and he pleaded guilty to all charges except the one pertaining to dangerous communications. The adjustment committee found plaintiff guilty based on his admission of guilt and the reporting officer's report that he walked into the lieutenant's office and saw plaintiff on the phone. The adjustment committee recommended discipline of the revocation of three months of good-conduct credit and the imposition of three months of C-grade status and segregation. The report indicated plaintiff

was served with a copy.

¶ 8 As to the first incident that occurred on August 19, 2009, the final summary report indicated plaintiff was charged with assaulting staff and damaging or misusing property. The report indicated no witnesses were requested but noted plaintiff claimed to have submitted a witness request. The adjustment committee found plaintiff guilty based on his admission that the cuff key broke and the incident officer's report stating plaintiff became combative when the handcuffs were being removed. The adjustment committee recommended the revocation of one year of good-conduct credit, restriction of contact visits for six months, and the imposition of C-grade status and segregation for one year. The report indicated plaintiff was served with a copy.

¶ 9 As to the second incident that took place on August 19, 2009, the final summary report indicated plaintiff was charged with intimidation or threats. No witnesses were requested, and plaintiff appeared and pleaded not guilty. The reporting officer's report indicated plaintiff became upset during an interview following the earlier assault and stated "you better not put me in the cell with anyone because there might be another assault." The adjustment committee found him guilty. The recommended discipline included two months of C-grade status and segregation. The report indicated plaintiff was served with a copy.

¶ 10 In August 2010, plaintiff filed a motion in opposition to the motion to dismiss. Plaintiff only challenged the propriety of the disciplinary proceedings as to the two incidents occurring on August 19, 2009. Plaintiff claimed (1) he did not receive written notice of the charges against him; (2) his witnesses were not called; (3) he was denied a staff member to help in preparing his defense and he was not given a continuance; (4) the final summary reports were incorrect; and (5) the adjustment committee lacked impartiality.

¶ 11 In November 2010, the trial court directed the parties to supplement the record with documentation as to whether plaintiff received the disciplinary reports and 24 hours' advanced notice of the adjustment-committee hearings. In December 2010, defendants responded by filing the affidavit of Mike Hille, an officer at Shawnee Correctional Center. He reviewed the disciplinary reports for the two incidents of August 19, 2009. The first page of each report indicated Hille served plaintiff at 8:53 a.m. on August 20, 2009. He checked the boxes indicating plaintiff refused to sign the tickets. Both disciplinary reports contained space for the offender to name witnesses he would like to be called. Plaintiff filed a response, claiming Hille lied in his affidavit because Hille could not have served him with the reports when he was in a mental-health cell.

¶ 12 The trial court granted defendants' motion to dismiss. The court found that, based on the additional information, the record indicated plaintiff received the process he was due in connection with the administrative hearing. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Plaintiff argues his due-process rights were violated by the adjustment committee. We disagree.

¶ 15 "An allegation of a due-process-rights violation *** states a cause of action in *mandamus*." *Dye v. Pierce*, 369 Ill. App. 3d 683, 687, 868 N.E.2d 293, 296 (2006). "*Mandamus* is an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty." *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464, 804 N.E.2d 546, 552 (2004). A petition for *mandamus* will be granted " 'only if a plaintiff establishes a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to

comply with the writ.' " *Hadley v. Montes*, 379 Ill. App. 3d 405, 407, 883 N.E.2d 703, 705 (2008) (quoting *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555, 778 N.E.2d 701, 703 (2002)).

The plaintiff bears the burden of demonstrating a clear, legal right to the requested relief and must set forth every material fact necessary to prove he is entitled to a writ of *mandamus*. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 812 N.E.2d 72, 75 (2004) (citing *Chicago Ass'n of Commerce & Industry v. Regional Transportation Authority*, 86 Ill. 2d 179, 185, 427 N.E.2d 153, 156 (1981)).

¶ 16 The dismissal of a *mandamus* petition for failure to state a cause of action is reviewed *de novo*. *Scotti v. Taylor*, 351 Ill. App. 3d 884, 887, 815 N.E.2d 10, 12 (2004). "Such dismissal will be held proper only if it clearly appears that no set of facts can be proved under the pleadings which will entitle the plaintiff to recover." *Scotti*, 351 Ill. App. 3d at 887, 815 N.E.2d at 12.

¶ 17 Initially, we note plaintiff did not challenge the disciplinary hearing for the August 17, 2009, incident in his petition for *mandamus*, his response to defendants' motion to dismiss, or in his *pro se* brief to this court. Thus, this issue is forfeited and we will not address it. See *Sellers v. Rudert*, 395 Ill. App. 3d 1041, 1046, 918 N.E.2d 586, 591 (2009); Ill. S. Ct. R. 341(h)(7) (eff. Apr. 11, 2007) (points not argued are forfeited).

¶ 18 Defendants argue plaintiff was not deprived of a protected liberty interest as a result of the disciplinary proceedings for the second August 19 incident and thus could not have suffered a due-process violation. In that instance, the discipline imposed on plaintiff included two months of C-grade status and two months of segregation.

¶ 19 In *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), the Supreme Court held a loss

of good-time credit implicates a protected liberty interest and the requirements of due process must be observed. Later, the Court found protected liberty interests "will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force ***, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995). In *Sandin*, 515 U.S. at 486, the Court found a prisoner's transfer to disciplinary segregation was not considered to be an "atypical, significant deprivation."

¶ 20 In *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1113, 942 N.E.2d 758, 760 (2011), the plaintiff inmate filed a *pro se mandamus* complaint, arguing his due-process rights had been violated in several disciplinary proceedings. As a result of the proceedings, the plaintiff alleged he was assigned to disciplinary segregation, reduced to C-grade status, had his commissary privileges restricted, and, in one instance, he lost one month of good-conduct credit. *Taylor*, 406 Ill. App. 3d at 1113, 942 N.E.2d at 760.

¶ 21 On appeal, the plaintiff argued he was deprived of due process at his disciplinary hearings because he was not allowed to request witnesses, was not provided a written statement of the witnesses' testimony, was not allowed live witness testimony, was subject to a partial fact finder, and exculpatory evidence was not considered on his behalf. *Taylor*, 406 Ill. App. 3d at 1115-16, 942 N.E.2d at 762. The defendants argued the plaintiff was not entitled to due process in any of the hearings except for the one in which a loss of good-conduct credit resulted. *Taylor*, 406 Ill. App. 3d at 1116, 942 N.E.2d at 762.

¶ 22 The Fifth District, citing *Wolff* and *Sandin*, found the plaintiff's "confinement to

disciplinary segregation for a limited amount of time when he [was] already housed at a supermaximum security prison [did] not constitute the deprivation required to trigger the standard for a cognizable liberty interest." *Taylor*, 406 Ill. App. 3d at 1117, 942 N.E.2d at 763. Thus, the court concluded the plaintiff was only entitled to due process for the hearing in which he lost good-time credit. *Taylor*, 406 Ill. App. 3d at 1117, 942 N.E.2d at 763.

¶ 23 In the case *sub judice*, the second August 19 incident did not result in the loss of good-conduct credit. The only punishment consisted of segregation and demotion to C-grade status. As plaintiff had no protected liberty interest in avoiding segregation or demotion to C-grade status, he lacked any right to due process during the disciplinary proceedings on the second August 19 incident. Thus, the trial court properly dismissed this claim.

¶ 24 Because plaintiff lost good-conduct credit for the first August 19 incident as a result of being found guilty of assaulting staff and damaging or misusing property, he was entitled to due process.

"Principles of due process require an inmate receive (1) notice of disciplinary charges at least 24 hours prior to a hearing, (2) the opportunity to call witnesses and present documentary evidence when consistent with institutional safety and correctional goals, and (3) a written statement by the fact finder of the evidence relied upon to support a finding of guilt." *Ford v. Walker*, 377 Ill. App. 3d 1120, 1125, 888 N.E.2d 123, 127 (2007).

¶ 25 A. Notice of Charges

¶ 26 Plaintiff argues he was denied his right to written notice of the disciplinary

charges at least 24 hours prior to the adjustment-committee hearing. The evidence, however, indicates plaintiff received proper and timely notice of the disciplinary charges against him. The disciplinary report indicates Officer Hille served plaintiff with a copy on August 20, 2009, the day after the offense and seven days before the adjustment-committee hearing. Hille confirmed he served plaintiff with the report and plaintiff refused to sign. Thus, plaintiff received timely written notice of the disciplinary charges against him prior to the adjustment-committee hearing. Although plaintiff contends Hille lied in his affidavit, *mandamus* relief "is not a mechanism for reversing the review board's factual findings and credibility determinations." *Dye*, 369 Ill. App. 3d at 687, 868 N.E.2d at 297. Plaintiff's petition failed to assert facts showing a clear right to *mandamus* relief.

¶ 27

B. Witnesses

¶ 28 Plaintiff argues he was wrongfully denied witnesses at the hearing. "Department rules specify that inmates may request that a witness be interviewed, by making a request in writing on the space at the bottom of the disciplinary report before the disciplinary hearing." *Taylor*, 406 Ill. App. 3d at 1118, 942 N.E.2d at 764; see also 20 Ill. Adm. Code 504.80(f)(2) (2008). "The adjustment committee may deny an inmate's witness request 'if the witness's testimony would be irrelevant, cumulative, or would jeopardize the safety or disrupt the security of the facility, among other reasons.' " *Ford*, 377 Ill. App. 3d at 1125, 888 N.E.2d at 128 (quoting *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1131, 815 N.E.2d 443, 452 (2004)). The adjustment committee may disapprove of an inmate's witness requests that are not received prior to a hearing. 20 Ill. Adm. Code 504.80(h)(3) (2008).

¶ 29 Here, the witness-request slip is still attached to the disciplinary report that

plaintiff received but refused to sign. Thus, plaintiff failed to request witnesses in a correct manner as provided by prison rules. Due process is not violated when an inmate fails to follow prison rules for requesting witnesses. *Taylor*, 406 Ill. App. 3d at 1118, 942 N.E.2d at 765. Moreover, even if plaintiff made a witness request at the hearing, the adjustment committee has the discretion to deny the request and that decision may not be challenged in a *mandamus* action. *Ford*, 377 Ill. App. 3d at 1125, 888 N.E.2d at 128. Thus, plaintiff failed to assert facts showing a clear right to *mandamus* relief.

¶ 30 C. Impartial Adjustment Committee

¶ 31 Plaintiff argues he was denied his right to an impartial adjustment committee. Plaintiff makes no specific argument as to who was impartial or give reasons why he thinks one of the adjustment-committee members was improperly partial.

"An offender who objects to a member of the Committee based on a lack of impartiality must raise the matter at the beginning of the hearing. The Committee shall document the basis of the objection and the decision in the Adjustment Committee summary." 20 Ill. Adm. Code 504.80(d) (2008).

Here, plaintiff did not object at the beginning of the hearing. A plaintiff fails to state a cause of action when he does not object to the adjustment committee's alleged impartiality at the disciplinary hearing as required. *Cannon*, 351 Ill. App. 3d at 1134, 815 N.E.2d at 454. Thus, plaintiff failed to assert facts showing a clear right to *mandamus* relief.

¶ 32 D. Continuance and Staff Assistance

¶ 33 Plaintiff argues he should have been given additional time to prepare his defense

and assistance in the preparation and presentation of that defense. Neither contention establishes a right to *mandamus* relief.

¶ 34 "An offender may, upon written request and for good cause shown, be granted additional time to prepare his or her defense." 20 Ill. Adm. Code 504.80(e) (2008). No evidence indicates plaintiff requested a continuance at the adjustment-committee hearing. Moreover, because granting a continuance is a discretionary act on behalf of the adjustment committee, *mandamus* relief is not available. See *Newsome v. Illinois Prison Review Board*, 333 Ill. App. 3d 917, 920-21, 776 N.E.2d 325, 328-29 (2002).

¶ 35 On the issue of assistance in preparing a defense, section 504.80(i) of title 20 of the Illinois Administrative Code provides as follows:

"The offender shall not have the right to either retained or appointed counsel. The offender may request the assistance of a staff member in the preparation and presentation of his or her defense if he or she is illiterate or does not speak English or when other circumstances exist that preclude the individual from adequately preparing his or her defense." 20 Ill. Adm. Code 504.80(I) (2008).

Section 504.80(i) does not require prison staff to assist an inmate in preparing his defense. *Cannon*, 351 Ill. App. 3d at 1133, 815 N.E.2d at 453. Because section 504.80(i) does not mandate staff assistance, plaintiff cannot challenge the adjustment committee's failure to provide such assistance in a *mandamus* petition. *Cannon*, 351 Ill. App. 3d at 1133, 815 N.E.2d at 453.

¶ 36 E. Recorded Proceedings

¶ 37 Plaintiff argues the adjustment-committee proceedings should have been recorded

because the chairperson "just wrote down what he wanted." However, due process does not require the proceedings to be recorded. Instead, a written record by the adjustment committee is required summarizing the statements and evidence presented, noting the reasons for finding the offender guilty, and giving reasons for recommending the disciplinary action. 20 Ill. Adm. Code 504.80(1) (2008); see also *Cannon*, 351 Ill. App. 3d at 1128, 815 N.E.2d at 450 ("*Wolff* requires that an inmate subject to discipline receive the fact finder's written statement of the reasons for the disciplinary action").

¶ 38 In this case, the adjustment committee's written report gives a record of the proceedings, including defendant's statement, and the basis for its decision, including the reporting officer's recitation of the incident. The adjustment committee then noted its recommended and final disciplinary action taken. As plaintiff received the process he was due, he failed to state a cause of action entitling him to *mandamus* relief.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment.

¶ 41 Affirmed.