

NOTICE
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2012 IL App (4th) 110245-U

Filed 2/17/12

NO. 4-11-0245

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

OTIS C. ARRINGTON,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
THE SPRINGFIELD ADMINISTRATIVE REVIEW)	No. 10MR314
BOARD, TERRI ANDERSON, JACKIE MILLER,)	
and BRADLEY J. ROBERT,)	Honorable
Defendants-Appellees.)	John W. Belz,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held: Mandamus* action barred by doctrine of *laches*; and further, inmate's allegations did not state a claim for violation of due process.

¶ 2 On May 13, 2010, plaintiff, Otis C. Arrington, an inmate in the custody of the Illinois Department of Corrections (DOC), *pro se* filed a petition for writ of *mandamus* under article 14 of the Code of Civil Procedure (Code) (735 ILCS 5/14-101 through 14-109 (West 2008)). In his petition, Arrington sought an order directing defendants, the Springfield Administrative Review Board and various DOC employees, to (1) expunge a November 22, 2008, disciplinary ticket, (2) transfer him to Taylorville Correctional Center (Taylorville), and (3) pay him "compensation."

¶ 3 On December 1, 2010, defendants Terri Anderson, Jackie Miller, and Bradley J. Robert moved to dismiss Arrington's petition under section 2-615 (735 ILCS 5/2-615 (West

2008)) of the Code. Defendants argued that (1) Arrington failed to exhaust his administrative remedies, (2) the petition was barred by *laches*, and (3) Arrington's petition failed to state a cause of action for *mandamus* relief.

¶ 4 On March 15, 2011, the trial court dismissed Arrington's petition. Arrington appeals that dismissal, and we affirm.

¶ 5 The disciplinary ticket at issue stemmed from a November 1, 2008, incident that resulted in charges against Arrington of attempted sexual misconduct. Following an internal affairs investigation, a reporting employee issued a disciplinary report on November 22, 2008. Arrington was provided a copy of the report on November 23, 2008. In the Adjustment Committee's final summary report, dated December 1, 2008, the record of proceedings indicates Arrington stated he was not guilty. Arrington asked that two witnesses be interviewed and their statements were included in the final summary report.

¶ 6 The Adjustment Committee found Arrington guilty of attempted sexual misconduct. The committee based its decision on witness statements and a statement made by a confidential source. The report stated, in part, that "on 11-01-08 inmate Arrington did attempt to commit the offense of sexual misconduct by his actions and comments towards inmate Meisel K-99704 in East 1 housing Unit." The disciplinary action included three - months' C grade, three - months' segregation, revocation of "GCC or SGT 3 months," and a disciplinary transfer.

¶ 7 Arrington filed a grievance on January 28, 2009. Arrington argued, in part, that he was served the November 22, 2008, disciplinary report more than eight days after the commission of the offense on November 1, 2008, and therefore, the disciplinary report should be expunged because service did not comply with section 504.30 of title 20 of the Illinois Adminis-

trative Code (Administrative Code) (20 Ill. Adm. Code 504.30 (2011)). On March 25, 2009, Arrington "refil[ed]" his grievance, attaching the disciplinary report dated November 22, 2008, and the Adjustment Committee final summary report dated December 1, 2008. The Administrative Review Board returned Arrington's grievance as untimely on April 2, 2009.

¶ 8 On May 13, 2010, Arrington *pro se* filed his petition for writ of *mandamus* in the Sangamon County circuit court. Arrington requested that the court order defendants to (1) expunge the November 22, 2008, disciplinary ticket, (2) transfer him to Taylorville, and (3) pay him "compensation."

¶ 9 On December 1, 2010, defendants Anderson, Miller, and Robert moved to dismiss Arrington's petition under section 2-615 (735 ILCS 5/2-615 (West 2008)) of the Code. Defendants argued (1) Arrington failed to exhaust his administrative remedies, (2) the complaint was barred by *laches*, and (3) Arrington's complaint failed to state a cause of action for *mandamus*.

¶ 10 On March 15, 2011, the trial court granted the motion to dismiss. This appeal followed.

¶ 11 We review *de novo* a trial court's ruling under section 2-615 (735 ILCS 5/2-615 (West 2008)) of the Code. See *Malcome v. Toledo, Peoria & Western Ry. Corp.*, 349 Ill. App. 3d 1005, 1006, 811 N.E.2d 1199, 1201 (2004).

¶ 12 We first address defendants' argument that Arrington's petition was barred by *laches*. To establish the doctrine of *laches* applies, the party seeking its application must generally prove two elements: (1) the petitioner lacked due diligence in bringing his or her claim; and (2) the party asserting *laches* was thereby prejudiced. *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739, 791 N.E.2d 666, 671 (2003). The first element is established when it is shown more

than six months elapsed between the accrual of the cause of action and the filing of the petition, unless the plaintiff provides a reasonable excuse for the delay. *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671.

¶ 13 Here, more than one year separated the April 2, 2009, decision of the Administrative Review Board and the May 13, 2010, filing of the petition for writ of *mandamus*. In his response to defendants' motion to dismiss, Arrington blamed his delay in initiating these proceedings on his pursuit of relief through the Governor's office and his efforts to secure copies of materials in his master file through a Freedom of Information Act (5 ILCS 140/1 through 11 (West 2008)) request. However, Arrington's decision to pursue alternative means of relief does not justify his delay in bringing these proceedings. See *Alicea v. Snyder*, 321 Ill. App. 3d 248, 254, 748 N.E.2d 285, 290 (2001). Arrington's alternative pursuits did not preclude him from filing an action for writ of *mandamus* in the circuit court. Arrington offered no reasonable excuse for the more than one-year delay in filing his petition. The first element of the *laches* doctrine thus applies.

¶ 14 As to the second element of the *laches* doctrine, this court, in *Ashley*, held prejudice is inherent "in cases where inmates file petitions for writ of *mandamus* more than six months after the completion of the original DOC disciplinary proceedings and no reasonable excuse exists for the delay." *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671. We noted the "DOC houses over 42,000 adult inmates who have little disincentive to litigate over disciplinary proceedings." *Ashley*, 339 Ill. App. 3d at 739-40, 791 N.E.2d at 671. We further quoted *Alicea*:
" 'DOC conducts a large number of disciplinary proceedings every year, and the administrative expense and burden of conducting

reviews so long after the completion of the original proceedings would be substantial. Such an inquiry would result in extensive public detriment and inconvenience.' " *Ashley*, 339 Ill. App. 3d at 740, 791 N.E.2d at 672 (quoting *Alicea*, 321 Ill. App. 3d at 254, 748 N.E.2d at 290).

Following *Ashley*, we find prejudice is presumed. Because both elements of the *laches* doctrine are present, the doctrine of *laches* bars Arrington's claim.

¶ 15 Even if Arrington's petition was not barred under the *laches* doctrine, we would affirm the dismissal because the petition failed to state a claim. In his petition, Arrington argued he was denied due process during his prison disciplinary proceedings.

¶ 16 *Mandamus* is an extraordinary remedy that may be used to compel a public officer to perform his official duties that do not involve an exercise of discretion. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229, 710 N.E.2d 798, 813 (1999). "A writ of *mandamus* will not be granted unless the plaintiff can show a clear, affirmative right to relief, a clear duty of the defendant to act, and clear authority in the defendant to comply with the writ." *Spagnolo*, 186 Ill. 2d at 229, 710 N.E.2d at 813. Such relief " 'is not appropriate to regulate a course of official conduct or to enforce the performance of official duties generally.' " *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1127, 815 N.E.2d 443, 449 (2004) (quoting *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739, 759 N.E.2d 585, 588 (2001)).

¶ 17 "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). 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. *Cannon*, 351 Ill. App. 3d at 1127, 815 N.E.2d at 449 (citing *Wolff v. McDonnell*, 418 U.S. 539, 563-66, 41 L. Ed. 2d 935, 955-56, 94 S. Ct. 2963, 2978-79 (1974)).

¶ 18 First, Arrington claimed that defendants violated section 504.30 of title 20 of the Administrative Code when Arrington received service of the November 22, 2008, disciplinary report on November 23, 2008, more than eight days after the commission of the offense on November 1, 2008. Section 504.30 provides that "[i]n no event shall a disciplinary report *** be served upon an adult offender more than 8 days *** after the commission of an offense *or the discovery thereof* unless the offender is unavailable or unable to participate in the proceeding." (Emphasis added.) 20 Ill. Adm. Code 504.30(f) (2011).

¶ 19 This requirement is mandated by the Administrative Code, not the United States Constitution. A violation of state administrative regulations does not amount to an infringement of Arrington's constitutional rights. See *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000) ("Prison regulations *** were never intended to confer rights on inmates or serve as a basis for constitutional claims"). Arrington's allegations involve violations of state administrative rules that govern prisons, not violations of the United States Constitution. Constitutionally, Arrington is entitled to due process, which includes notice of disciplinary charges at least 24 hours prior to a hearing. See *Cannon*, 351 Ill. App. 3d at 1127, 815 N.E.2d at 449 (citing *Wolff v. McDonnell*, 418 U.S. at 563-66, 41 L. Ed. 2d at 955-56, 94 S. Ct. at 2978-79). Here, Arrington was provided a copy of the disciplinary report on November 23, 2008, and

the adjustment committee held a hearing on November 28, 2008.

¶ 20 Moreover, we disagree defendants violated section 504.30 of title 20 of the Administrative Code when Arrington received service of the November 22, 2008, disciplinary report on November 23, 2008, more than eight days after the commission of the offense on November 1, 2008. Section 504.30, entitled "Preparation of Disciplinary Reports," states that "[i]n no event shall a disciplinary report *** be served upon an adult offender more than 8 days *** after the commission of an offense *or the discovery thereof* unless the offender is unavailable or unable to participate in the proceeding." (Emphasis added.) 20 Ill. Adm. Code 504.30(f) (2011). Section 504.30(b), which is in the same section, states that "[i]f an employee observes an adult offender committing an offense, discovers evidence of its commission, or receives information from a reliable witness of such conduct, the employee shall promptly prepare a disciplinary report." 20 Ill. Adm. Code 504.30(b) (2011). Here, no employee observed Arrington committing the offense. An inmate complained to a "Dayroom officer" on November 2, 2008, that Arrington made "unwanted sexual advances" toward the inmate on November 1, 2008. Internal Affairs then conducted interviews of the complaining inmate, Arrington, another inmate, and a confidential source present at the time of the offense. Following the gathering of information from the various inmates, a reporting employee promptly prepared a disciplinary report on November 22, 2008. Based on the record in this case, defendants did not violate section 504.30 of title 20 of the Administrative Code.

¶ 21 Second, Arrington contended his due-process rights were violated because the adjustment committee's guilty findings in connection with his November 22, 2008, disciplinary report was not supported by the evidence. To find an inmate guilty of a charged offense, the

adjustment committee "must be reasonably satisfied there is some evidence that the offender committed the offense." 20 Ill. Adm. Code 504.80(j) (2011). Arrington's claim is insufficient to show his due-process rights were violated. The relevant adjustment-committee decision was attached to his complaint. The decision shows the committee provided the basis for its guilty finding and included the facts relied upon by the committee. A review of the adjustment-committee decision shows the committee's decision was supported by "some evidence" as required.

¶ 22 Accordingly, we find the trial court properly dismissed Arrington's petition as barred under the doctrine of *laches* and for failure to state a claim.

¶ 23 For the foregoing reasons, we affirm the order dismissing Arrington's *mandamus* petition.

¶ 24 Affirmed.