

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 110573-U

Filed 6/20/12

NO. 4-11-0573

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MARK HOWARD,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
THE DEPARTMENT OF CORRECTIONS; GLADYS)	No. 10MR774
TAYLOR; SARAH JOHNSON; SHERRY BENTON;)	
TERRI ANDERSON; THE OFFICE OF INMATE)	
AFFAIRS; and THE ADMINISTRATIVE REVIEW)	Honorable
BOARD,)	John Schmidt,
Defendants-Appellees.)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Motion to dismiss filed by defendants, Illinois Department of Corrections (Department) and several of its employees, was correctly granted where plaintiff, an inmate in the custody of the Department, had filed a complaint for *mandamus* to compel defendants to reverse its Administrative Review Board's decision to deny his grievances regarding disciplinary proceedings and review all of his prior grievances for compliance with due process and the Department's regulations.

¶ 2 Plaintiff, Mark Howard, an inmate in the custody of the Department, filed a complaint for *mandamus* against defendants, the Department and its Director and various employees of the Department's Office of Inmate Affairs, to compel them to (1) reverse the Department's Administrative Review Board's decisions denying his grievances regarding disciplinary proceedings in which he had been found guilty of insolence and possession of contraband and (2) review all of his prior grievances for compliance with due process and the

Department's regulations. Plaintiff claimed the Administrative Review Board (Board) refused to take any corrective action despite the facts outlined in his grievances and had a pattern of denying his grievances without investigating their facts. Defendants moved to dismiss the complaint for failure to state a claim for *mandamus* and because the claims were barred by *laches*. The trial court granted the motion and dismissed plaintiff's complaint. Plaintiff appeals and we affirm.

¶ 3

I. BACKGROUND

¶ 4

Plaintiff is an inmate in the custody of the Department and at all relevant times was incarcerated at the Western Illinois Correctional Center. On August 6, 2009, he was issued a disciplinary report charging him with insolence for flashing a nude photograph to female staff. A few days later, the Adjustment Committee found him guilty of the charge.

¶ 5

On October 8, 2009, plaintiff file a grievance requesting this disciplinary decision be expunged because the Adjustment Committee failed to consider exculpatory evidence. According to plaintiff, if the Adjustment Committee had viewed the photograph and the leather wallet holding it, "it would have been a well grounded fact that it would have been absolutely impossible for this offense to have occurred." The Grievance Officer, the Chief Administrative Officer, and the Board denied the grievance and, on March 8, 2010, the Director of the Department concurred.

¶ 6

As a result of the nude photograph incident, the leather wallet and photograph were taken from plaintiff. He filed a grievance (original not found in the record) because the items were taken from him on August 6, 2009, without a shakedown slip. The Grievance Officer's recommendation was reported on December 8, 2009, and approved by the Chief Administrative Officer that same day. On March 24, 2010, the Board denied the grievance and

on March 26, 2010, the Director concurred.

¶ 7 On January 27, 2010, plaintiff was issued a disciplinary report citing him with damage or misuse of property for having a radio which had been altered to hear the television through the speakers. The radio had apparently been taken apart and put back together. The Adjustment Committee found plaintiff guilty of a reduced charge, possession of contra-band/unauthorized property. He was given a 14-day commissary restriction. On February 4, 2010, the Chief Administrative Officer concurred with the recommendation.

¶ 8 On March 10, 2010, plaintiff filed a grievance requesting the radio be returned to him because the Adjustment Committee violated his due process rights. According to plaintiff, he told the Adjustment Committee it was impossible for him to have taken the radio apart because the security seal was still in place. He also asserted the Adjustment Committee failed to comply with Department rules by not considering a witness statement and failed to state in its decision why exonerating evidence was disregarded. The Grievance Officer, the Chief Administrative Officer, and the Board denied the grievance and, on June 10, 2010, the Director of the Department concurred.

¶ 9 On October 18, 2010, plaintiff filed a complaint for *mandamus* relief against Gladys Taylor, Director of the Department, and Board members Sarah Johnson, Sherry Benton and Terri Anderson to compel them to reverse the denials of his grievance regarding the disciplinary decisions. He also sought to compel defendants to "review all of the plaintiff's grievances in the past." Plaintiff also filed a motion for leave to file the complaint for *mandamus*, requesting the trial court to compel defendants to investigate the manner in which all of his grievances were reviewed by the Board. He alleged the Board refused to compel the Adjustment

Committee to expunge its insolence disciplinary decision "after clearly learning that the process violated " his right to due process and the Department's regulations. Plaintiff alleged the Adjustment Committee denied his right to present documentary evidence, did not view the photograph at issue, and failed to explain why it disregarded exonerating evidence.

¶ 10 Plaintiff also alleged the Board refused to grant his grievance regarding the contraband decision although he informed the Board the proceeding violated his right to due process and the Department's regulations by denying him the opportunity to present documentary evidence. He also claimed the Board refused to reprimand the grievance officer "for deliberately refusing to investigate/interview [his] witness or inspect the so-called contraband in question to verify that the security seal was in fact never touched and in place."

¶ 11 Finally, plaintiff alleged the Board failed to take any corrective measures despite the facts he outlined in his grievances and defendants had a pattern of denying his grievances without investigating them and blatantly disregarded the merits of his grievances. Plaintiff claims he filed grievances about Grievance Officer Tara Goins and "Counselor S. VanStrien," which caused copies of his grievances to go missing and caused him to be denied access to law library services, and the Board did not investigate those grievances.

¶ 12 On March 9, 2011, defendants filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)) and a memorandum of law in support of the motion, arguing plaintiff failed to state a claim for *mandamus* relief and his claims were barred by *laches*. On June 7, 2011, the trial court granted the motion and dismissed plaintiff's complaint. This appeal followed.

¶ 13

II. ANALYSIS

¶ 14 A motion to dismiss under section 2-615 of the Code is warranted when the pleadings show the plaintiff can prove no set of facts entitling him to relief. *Behringer v. Page*, 204 Ill. 2d 363, 369, 789 N.E.2d 1216, 1221 (2003). The question to be considered is whether the allegations of the complaint, when viewed in the light most favorable to the plaintiff, are sufficient to state a cause of action. *Id.* A plaintiff must allege sufficient facts to bring his claim within the cause of action asserted and mere conclusions of fact or law unsupported by any allegations of specific facts upon which his conclusions rest are insufficient to state a cause of action. *Id.*, at 378, 789 N.E.2d at 1226.

¶ 15 Orders dismissing a complaint pursuant to section 2-615 are reviewed *de novo* (*Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18, 21) and may be affirmed on any ground supported by the record (*Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578, 948 N.E.2d 132, 145 (2011)).

¶ 16 The trial court correctly dismissed plaintiff's claim to compel defendants to reverse the decisions denying his grievances about the disciplinary proceeding finding him guilty of insolence and the refusal to return the wallet and photograph because the claims are barred by *laches*. *Laches* is an equitable doctrine precluding a claim when the plaintiff's failure to timely assert his claim prejudiced the adverse party. *Ashley v. Pierson*, 339 Ill. App. 3d 733, 737, 791 N.E.2d 666, 670 (2003). Courts have found prejudice to the Department is shown where an inmate seeks review of a prison disciplinary proceeding more than six months after its completion. See *id.*, at 739, 791 N.E.2d at 671; *Alicea v. Snyder*, 321 Ill. App. 3d 248, 254, 748 N.E.2d 285, 290 (2001).

¶ 17 Plaintiff did not exercise diligence in filing his complaint. He was issued a

disciplinary report charging him with insolence, was found guilty by the Adjustment Committee, and he filed a grievance. The Grievance Officer, the Chief Administrative Officer, and Board denied the grievance, and on March 8, 2010, the Director concurred. Similarly, plaintiff filed a grievance regarding the taking of his wallet and photograph. The Grievance Officer, the Chief Administrative Officer, and Board denied the grievance, and on March 26, 2010, the Director concurred. Plaintiff did not file his complaint for *mandamus* until October 18, 2010, more than six months after the Director's decision denying his grievances. Plaintiff did not provide any explanation for this delay. On appeal, plaintiff asserts in a conclusory manner he "was unable to gain meaningful access to the law library *** research and raise a colorable claim[.]" but he does not explain how he was denied access to the library or how this precluded him from filing this action sooner. Further, as a general rule, issues not raised in the trial court, such as an explanation for delay, cannot be raised for the first time on appeal. See *People ex rel. Wilcox v. Equity Funding Life Insurance Co.*, 61 Ill. 2d 303, 313, 335 N.E.2d 448, 453-54 (1975) (court of review will not consider theories or questions if proof might have been offered to refute or overcome objections had they been presented in trial court).

¶ 18 Plaintiff's complaint for *mandamus* relief as a whole fails to state a claim for relief. *Mandamus* is an extraordinary remedy to enforce the performance of official duties by a public officer when no discretion on his part is involved. *Ford v. Walker*, 377 Ill. App. 3d 1120, 1124, 888 N.E.2d 123, 127 (2007). It is appropriate only where the plaintiff can demonstrate he has a clear right to the relief requested, the defendant has a clear duty to act, and the defendant has clear authority to comply with the terms of the order granting *mandamus* relief. *Id.*

Mandamus may be used to compel a public official to perform only a duty that is ministerial and

it may not be used to direct the official to reach a particular decision or exercise his discretion in a particular manner. *Hadley v. Ryan*, 345 Ill. App. 3d 297, 301, 803 N.E.2d 48, 52 (2003).

¶ 19 Plaintiff sought to compel the defendants to (1) grant his grievances and (2) review his prior grievances for compliance with due process and the Department's regulations. Plaintiff did not have a clear right to any of the relief sought.

¶ 20 Inmates do not have a constitutional right to a grievance process. *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011) (prison grievance procedures not mandated by the First Amendment); *Massey v. Helman*, 259 F.3d 641, 647 (7th Cir. 2001) (State-created inmate grievance procedures do not give rise to liberty interests protected by the due process clause). Plaintiff has no enforceable right to a grievance proceeding, the proceeding offered is not protected by due process clause and he has no right to compel defendants to reach a particular decision on his grievances. Further, we have held the Unified Code of Corrections and Department regulations are "designed to provide guidance to prison officials" and do not create more rights for inmates than are constitutionally required. *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶ 17, 957 N.E.2d 572, 575. The Department's regulations do not confer any more rights on inmates than are constitutionally required. *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 25, 960 N.E.2d 1, 7.

¶ 21 Where resolving grievances requires defendants to exercise judgment and determine whether the plaintiff's disciplinary proceedings were defective on evidentiary grounds, their decisions denying grievances are discretionary, not ministerial. See *Dye v. Pierce*, 369 Ill. App. 3d 683, 688, 868 N.E.2d 293, 297 (2006) (because Board's decision of what evidence to consider is wholly discretionary, it cannot be challenged through *mandamus* petition). As noted,

mandamus actions may not be used to compel purely discretionary acts be undertaken in a particular way.

¶ 22 One of plaintiff's specific claims as to a violation of his rights during disciplinary proceedings was he was denied the opportunity to present documentary evidence. He did not allege facts supporting this argument. Although prison disciplinary proceedings, which may result in the loss of a constitutionally protected liberty interest, are required to include an opportunity for the inmate to call witnesses and present documentary evidence (*Torres v. Walker*, 364 Ill. App. 3d 666, 670, 848 N.E.2d 156, 159 (2006)), an inmate's due process right to present this evidence is limited and does not include the right to present evidence unduly hazardous to institutional safety or correctional goals (see *Wolff v. McDonnell*, 418 U.S. 539, 566, 94 S. Ct. 2963, 2979 (1974)) or evidence that is irrelevant, repetitive, or otherwise unnecessary (see *Pannell v. McBride*, 306 F.3d 499, 503 (7th Cir. 2002)). Plaintiff did not allege what documentary evidence he was denied the opportunity to present or how it was relevant to the proceeding. Thus, he failed to allege facts showing either the disciplinary proceedings violated his right to due process or the Department's regulations.

¶ 23 Plaintiff also complains the disciplinary decisions at issue failed to include a written statement by the factfinder of the evidence relied upon and the reasons for the disciplinary action and the fact the disciplinary board's decision must be supported by "some evidence" as required. See *Torres*, 364 Ill. App. 3d at 670, 848 N.E.2d at 159. Although plaintiff claimed the Adjustment Committee's decision finding him guilty of insolence failed to state why it disregarded exonerating evidence and the photograph at issue was never submitted into evidence, he failed to allege facts showing the decision did not comply with the requirements of due process

or the Department's regulations. A disciplinary report alone provides "some evidence" for the disciplinary decision where the report describes the incident in sufficient detail. *McPherson v. McBride*, 188 F.3d 784, 786 (7th Cir. 1999). Plaintiff claimed the disciplinary decisions failed to state why exonerating evidence was disregarded but did not state what exonerating evidence he claimed was presented or disregarded. Plaintiff's conclusory allegations the Adjustment Committee's decisions failed to provide adequate reasons for finding plaintiff guilty and were not supported by sufficient evidence were not supported by factual allegations and are insufficient to state a cause of action for *mandamus*.

¶ 24 Finally, plaintiff does not have a clear right to have defendants review his prior grievances for compliance with due process and Department regulations. He does not have any enforceable right to a grievance process. He did not allege specific facts showing a violation of the grievance procedures. He made vague allegations he filed grievances about Grievance Officer Goins and "Counselor S. VanStrien" and then his grievances came up missing and he lost library privileges. Plaintiff made no allegations he appealed those grievances to the Board in accordance with Department regulations. He failed to state a cause of action for *mandamus* relief.

¶ 25 III. CONCLUSION

¶ 26 We affirm the trial court's judgment.

¶ 27 Affirmed.