

NOTICE
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2012 IL App (4th) 110916-U

Filed 7/30/12

NO. 4-11-0916

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JOSEPH DOLE,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
DAVID L. MITCHELL, DION L. WATKINS,)	No. 10MR797
YOLANDE D. JOHNSON, and GLADYSE TAYLOR,)	
Defendants-Appellees.)	Honorable
)	John Schmidt,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Where plaintiff failed to state a claim for *mandamus* relief and/or failed to exhaust his administrative remedies, the trial court did not err in granting defendant's motion to dismiss.

¶ 2 In December 2010, plaintiff, Joseph Dole, an inmate in the Illinois Department of Corrections (Department), filed a *pro se* petition for writ of *mandamus* against defendants, David L. Mitchell, Dion L. Watkins, Yolande D. Johnson, and Gladyse Taylor. In March 2011, defendant Taylor filed a motion to dismiss, which the trial court granted.

¶ 3 On appeal, plaintiff argues the trial court erred in granting defendant's motion to dismiss his petition for *mandamus*. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff is an inmate at Tamms Correctional Center. In December 2009, plaintiff

was issued a disciplinary report for violating disciplinary offense Nos. 601 (aiding and abetting, attempt, solicitation, or conspiracy to violate any disciplinary rule) and 310 (abuse of privileges). 20 Ill. Adm. Code 504.Appendix A (2008). The report alleged plaintiff was attempting to violate section 525.130(h)(6) of title 20 of the Illinois Administrative Code (20 Ill. Adm. Code 525.130(h)(6) (2008)), which provides as follows:

"(h) Department employees may spot check and read outgoing non-privileged mail. Outgoing non-privileged mail or portions thereof may be reproduced or withheld from delivery if it presents a threat to security or safety, including the following:

* * *

(6) The letter solicits gifts, goods, or money from other than family members."

¶ 6 The report claimed the prison mailroom received a letter addressed to Nancy Meyer with plaintiff's return address. In correspondence to Meyer, plaintiff stated as follows: "Okay for my Christmas present this year please order me these magazines. I'm enclosing the order form etc. all filled out all you have to do is mail it in with a money order." Included with the letter was an order form to "Tightwad Magazines Inc." with a list of plaintiff's requested magazines that totaled \$34.80. A check of prison records revealed Meyer was listed as plaintiff's friend.

¶ 7 The adjustment committee held a hearing on plaintiff's disciplinary ticket. Plaintiff objected to defendant Mitchell serving on the committee due to a grievance filed against him by plaintiff. Mitchell was unaware of any grievances pending. On the alleged violation,

plaintiff provided a written statement, claiming the violation was not a chargeable offense and all he did was reply to Meyer's question on what he wanted for Christmas. Plaintiff stated he wanted Meyer contacted as a witness, but the committee record indicates the request was denied as untimely and because plaintiff failed to state what Meyer could attest to at the hearing.

¶ 8 The adjustment committee found plaintiff guilty of attempting to abuse mail privileges. The committee recommended C-grade status and segregation for one month and the revocation of one month of good-conduct credits.

¶ 9 Thereafter, defendant filed a grievance, claiming his conduct did not violate section 525.130(h)(6) and his disciplinary proceedings violated the requirement of due process, equal protection, and Department regulations. The grievance officer recommended the grievance be denied. The administrative review board reviewed the disciplinary report and denied the grievance, and the Department Director concurred. The board explained that, contrary to plaintiff's grievance, the Director did review the adjustment-committee summary and "denied the revocation" of good-conduct credits.

¶ 10 In December 2010, plaintiff filed a petition for writ of *mandamus*, alleging, *inter alia*, his due-process rights were violated at the adjustment-committee hearing and section 525.130(h)(6) violated the equal-protection clause and denied his right to free speech. Plaintiff sought to expunge the December 2009 disciplinary report or an order requiring defendants to conduct new disciplinary proceedings.

¶ 11 In March 2011, defendant Taylor filed a motion to dismiss plaintiff's petition pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code). 735 ILCS 5/2-615 (West 2010). Defendant argued plaintiff was afforded due process, the evidence supported the

adjustment-committee's decision, and plaintiff was not entitled to *mandamus* relief. Plaintiff filed a reply to the motion to dismiss. In September 2011, the trial court granted defendant's motion to dismiss. This appeal followed.

¶ 12

II. ANALYSIS

¶ 13 Plaintiff argues the trial court erred in dismissing his petition for writ of *mandamus*. We disagree.

¶ 14

A. Jurisdiction & Standard of Review

¶ 15 In the case *sub judice*, plaintiff served only one of the four named defendants, and only defendant Taylor filed a motion to dismiss. Normally, the dismissal of a plaintiff's claim with regard to less than all defendants would not be appealable and we would not have jurisdiction. *Merritt v. Randall Painting Co.*, 314 Ill. App. 3d 556, 558-59, 732 N.E.2d 116, 117-18 (2000). However, we find the trial court's order dismissed plaintiff's petition in its entirety, as the claims asserted against the served and unserved defendants are the same. Thus, we have jurisdiction. See *Merritt*, 314 Ill. App. 3d at 559, 732 N.E.2d at 118.

¶ 16

As to our standard of review, we note defendant Taylor filed a section 2-615 motion to dismiss. Although the docket entry indicates the trial court dismissed the case under section 2-619, we will review the appeal under section 2-615. A motion to dismiss under section 2-615 of the Procedure Code challenges only the legal sufficiency of the complaint. *Pickel v. Springfield Stallions, Inc.*, 398 Ill. App. 3d 1063, 1066, 926 N.E.2d 877, 881 (2010). In ruling on a section 2-615 motion to dismiss, "the question is 'whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.'" *Green v. Rogers*, 234 Ill. 2d 478, 491, 917 N.E.2d

450, 458-59 (2009) (quoting *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004)).

The trial court should not grant the motion to dismiss "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161, 920 N.E.2d 220, 223 (2009). We review the dismissal pursuant to section 2-615 *de novo*. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18, 21.

¶ 17

B. *Mandamus*

¶ 18 "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). "Mandamus cannot be used to direct a public official or body to reach a particular decision or to exercise its discretion in a particular manner, even if the judgment or discretion has been erroneously exercised." *Hadley v. Ryan*, 345 Ill. App. 3d 297, 301, 803 N.E.2d 48, 52 (2003) (quoting *Crump v. Illinois Prisoner Review Board*, 181 Ill. App. 3d 58, 60, 536 N.E.2d 875, 877 (1989)).

¶ 19

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)).

¶ 20

1. *Due Process*

¶ 21 Plaintiff argues his due-process rights were violated when (1) he was disciplined without notice that his conduct was prohibited, (2) he was denied his requested witness and a continuance, and (3) he did not receive an adequate summary of the oral and written statements, the evidence relied upon, and the reasons underlying the discipline. Defendant, however, argues plaintiff did not allege he was deprived of a liberty interest as a result of the disciplinary proceedings. Thus, defendant contends plaintiff failed to establish a due-process violation.

¶ 22 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."

¶ 23 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.

¶ 24 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.

¶ 25 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.

¶ 26 In this case, the adjustment committee recommended the revocation of one month of plaintiff's good-conduct credits. However, that decision was denied by the Director. Thus, the only discipline received by plaintiff was one month of segregation and demotion to C-grade status. In the prison context, segregation and demotion in status do not raise due-process concerns. *Hoskins v. Lenear*, 395 F.3d 372, 375 (7th Cir. 2005). Moreover, transfer to disciplinary segregation at Tamms does not implicate due-process concerns "where there is no loss of some other cognizable liberty interest." *Taylor*, 406 Ill. App. 3d at 1117, 942 N.E.2d at 763. 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 proceeding. See *Williams v. Ramos*, 71 F.3d 1246, 1250 (7th Cir. 1995) ("Where there is no liberty interest, there can be no due process violation"). Thus, the trial court properly dismissed the due-process claim.

¶ 27 *2. Section 525.130(h)(6)*

¶ 28 In his petition, plaintiff alleged section 525.130(h)(6) was unconstitutional as applied to him under the facts of the case as it infringed on his first amendment "right to free speech without serving any legitimate penological purpose." However, plaintiff failed to show he exhausted his administrative remedies for this claim.

¶ 29 "The doctrine of exhaustion of administrative remedies holds that a party aggrieved by an administrative decision cannot seek judicial review without first pursuing all available administrative remedies." *Canel v. Topinka*, 212 Ill. 2d 311, 320, 818 N.E.2d 311, 319 (2004). "This requirement allows the administrative agency the opportunity to consider the facts of the case before it, use its expertise, and allow the aggrieved party to obtain relief without the need for judicial review." *Johnson v. Department of Corrections*, 368 Ill. App. 3d 147, 150, 857 N.E.2d 282, 285 (2006). The doctrine applies to grievances lodged by prisoners, "including those grievances alleging a constitutional violation." *Johnson*, 368 Ill. App. 3d at 150, 857 N.E.2d at 285.

¶ 30 Here, plaintiff did not allege he exhausted his administrative remedies for his claim that section 525.130(h)(6) was unconstitutional as applied to him under the facts of this case. Although he filed a grievance regarding his disciplinary proceedings, he did not assert this claim in that grievance. Without a showing of exhaustion of remedies, plaintiff cannot establish a clear affirmative right to *mandamus* relief.

¶ 31

3. Equal Protection

¶ 32 Along with his first-amendment claim, plaintiff alleged section 525.130(h)(6) violated the equal-protection clause of the fourteenth amendment. Plaintiff claimed any rule restricting prisoners from requesting books, magazines, money, or gifts would deny equal rights to prisoners "with no family or little family or [those who] are estranged from their family."

¶ 33 "[E]qual protection requires that similarly situated individuals be treated in a similar manner." *Murillo v. Page*, 294 Ill. App. 3d 860, 867, 690 N.E.2d 1033, 1039 (1998). "In the prison context, the Equal Protection Clause of the Fourteenth Amendment requires inmates to be treated equally, unless unequal treatment bears a rational relation to a legitimate penal interest." *May v. Sheahan*, 226 F.3d 876, 882 (7th Cir. 2000).

¶ 34 Plaintiff failed to allege facts sufficient to show he was treated unequally or that section 525.130(h)(6) treated similarly situated inmates more favorably than him. Moreover, he did not allege he fell into the group of "offenders with no family or little family or [who] are estranged from their family." Thus, he failed to allege facts showing section 525.130(h)(6) violated the equal-protection clause. Accordingly, the trial court did not err in dismissing plaintiff's petition for *mandamus*.

¶ 35

III. CONCLUSION

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

¶ 37 Affirmed.