

conducted the hearing which found plaintiff guilty of the charge.

¶ 5 Plaintiff is categorized as an extremely high escape risk. As such, he is moved to a new cell at least once every 90 days. On August 4, 2010, plaintiff was moved from his previous cell to cell H-4-7. Two days later and as a matter of routine, correctional staff searched his cell. The correctional officer who searched plaintiff's cell found that the cell's call button was damaged. It was loose, and when the officer pulled it from the wall, the call button was wrapped in toilet paper so it could be wedged back into the wall. The wires also appeared to have been tampered with. As a response to this incident, plaintiff's personal property was confiscated for 72 hours and he was issued an inmate disciplinary report charging him with damage or misuse of state property. Plaintiff denied damaging the call button and requested a full investigation of the incident. Plaintiff alleged that various officers as well as inmates told him and Lt. Mitchell that they did not believe he damaged the call button. The adjustment committee did not conduct an investigation.

¶ 6 Plaintiff was moved to a different cell immediately after the correctional officer found that the call button was damaged in cell H-4-7. There, another inmate, inmate Gordon, allegedly informed plaintiff that the call button had actually been damaged by a previous occupant of the cell a year and a half earlier. Gordon wrote a statement for plaintiff stating this information. Another inmate, inmate Pickett, informed plaintiff that, prior to placing plaintiff in H-4-7, the staff had not physically entered the cell to conduct a "shake down" to determine that the cell was clean and everything was in working order. Inmate Pickett wrote a statement relaying this information for plaintiff as well.

¶ 7 Plaintiff requested witnesses for the adjustment committee hearing. His witness request list included any corrections officers who had worked in the H-pod control tower during the two days in which plaintiff was in cell H-4-7 as well as inmates Gordon and Pickett. He claimed that the correctional officers working in the control tower would have

heard the call button making a sound if he had actually been the one to damage it.

¶ 8 At the adjustment committee hearing on August 13, 2010, plaintiff provided a written statement in which he denied damaging the call button and claimed that the call button was damaged prior to his being moved to cell H-4-7. The adjustment committee denied plaintiff's request for testimony from inmates Gordon and Pickett, finding that neither inmate could have seen inside the cell to determine if it was being searched. The committee further denied plaintiff's request for the correctional officers in the control tower to testify because he did not clearly identify who he wanted as witnesses. It stated that facility records indicated that a preoccupancy search was conducted prior to the offender being placed in the cell and the call button was not damaged at that point. The committee found that it was satisfied that the offense occurred. It then recommended that plaintiff be demoted to one month C-grade status, put on one month commissary restriction, and ordered to pay restitution to the State of Illinois for \$35.75. Defendant Johnson approved the committee's recommendations.

¶ 9 Plaintiff filed a grievance on August 31, 2010. In the grievance, he alleged that the adjustment committee had violated a number of IDOC rules. He claimed that he should not have received a disciplinary ticket because no one had actually seen him damage the call button and that the committee should have conducted an investigation prior to issuing a ticket. He also alleged that he had tried to give Lt. Mitchell the inmate witness statements at the hearing but Lt. Mitchell had refused to accept them. He argued that the inmates would have been able to see if anyone had searched the cell without being able to actually see inside of the cell. He argued that the committee should have looked at the log books for the control tower in H-pod to determine which correctional officers could have served as witnesses for plaintiff at the hearing.

¶ 10 The grievance officer recommended that plaintiff's grievance be denied. The chief

administrative officer concurred. Plaintiff appealed to the Director. The administrative review board recommended that plaintiff's appeal be denied. The acting Director concurred.

¶ 11 On January 31, 2011, plaintiff filed a *mandamus* complaint against defendants Lt. Mitchell and Warden Johnson, alleging that his due process rights were violated when the adjustment committee failed to call the witnesses he requested. He further alleged that defendants failed to perform their ministerial duties. Plaintiff stated that defendant Johnson had a duty to make "sure that all rules are followed and complied with by staff" and had "rubber stamped" plaintiff's appeal. He further argued that defendant Johnson should have forced defendant Mitchell to follow department rules. He claimed that defendant Mitchell had failed to follow Rule 504 of the Illinois Administrative Code (Code) (20 Ill. Adm. Code 504 (2003)) because he refused to investigate the disciplinary report against plaintiff, failed to conduct an adequate hearing, and did not allow plaintiff to have witnesses. As relief, plaintiff requested that the circuit court issue an order of *mandamus* compelling defendants to provide a new hearing in accordance with Rule 504 of the Code, or in the alternative, expunge the disciplinary report; repay or remove the hold from plaintiff's trust account the amount of \$35.75; order defendants to reimburse plaintiff any costs and fees incurred from the *mandamus* proceedings; and grant any other relief that the court deemed necessary.

¶ 12 On March 31, 2011, defendants filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). In this motion, defendants argued that the discipline imposed upon plaintiff did not infringe upon any of his liberty interests and therefore did not impose upon his right to due process. Further, defendants argued that plaintiff had an adequate postdeprivation remedy with respect to restitution, namely, the ability to file an action the Illinois Court of Claims. Defendants also pointed out that the Code does not mandate that a plaintiff's claims be investigated, but that the language of the Code says that a hearing investigator *may* investigate a claim if he deems it

appropriate to do so.

¶ 13 On August 24, 2011, the circuit court granted defendants' motion to dismiss because plaintiff's penalties did not affect his prison sentence or impose an atypical or significant hardship such that plaintiff's due process rights were violated. It went on to state that plaintiff's claim for monetary restitution failed because it is not a due process issue. This appeal followed.

¶ 14

ANALYSIS

¶ 15 We review *de novo* the order granting a motion to dismiss a *mandamus* complaint. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998 (2004). We view the pleadings in the light most favorable to the nonmoving party. *Id.* *Mandamus* is an extraordinary remedy to enforce the performance of official duties by a public officer where no exercise of discretion exists. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999). The purpose of *mandamus* is not to substitute the court's discretion and judgment for the discretion of the official. *Hatch v. Szymanski*, 325 Ill. App. 3d 736 (2001). *Mandamus* relief will not be granted unless petitioner can demonstrate a clear, affirmative right to relief, a clear duty of the official to act, and a clear authority in the official to comply with the writ. *Hatch*, 325 Ill. App. 3d at 739. *Mandamus* relief will be granted only if petitioner sets forth every material fact needed to demonstrate that he has satisfied the elements of a *mandamus* action. *Turner-El v. West*, 349 Ill. App. 3d 475, 480 (2004). *Mandamus* is not a means to reverse an official's discretionary acts. *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1131 (2004).

¶ 16 First, plaintiff does not have a clear, affirmative right to relief. He argues that his rights were abridged because the adjustment committee failed to investigate the charges against him and refused to interview the witnesses he requested. However, department procedures provide that an investigation into a disciplinary charge may be conducted as IDOC deems appropriate. 20 Ill. Adm. Code 504.60(b) (2003). Further, the Code provides

that a hearing investigator may interview any person who may have information that relates to the alleged violation. 20 Ill. Adm. Code 504.60(d) (2003). The use of the word "may" in both scenarios indicates that plaintiff does not have a clear, affirmative right to have witness testimony and an investigation. Further, the request for witnesses may be denied if the information would be irrelevant or cumulative or if calling such witnesses would jeopardize the safety of the corrections facility. 20 Ill. Adm. Code 504.80(h) (2003). The officials are allowed discretion in both instances. Therefore, plaintiff had no clear right to have witnesses, nor did he have a right to an investigation of the charges, as both allow discretion on the part of the officials.

¶ 17 Next, defendants did not have a clear duty to act. As noted above, prison officials cannot be compelled to call witnesses in a disciplinary proceeding. *Cannon*, 351 Ill. App. 3d at 1131. As *mandamus* is a method used to enforce duties in which the prison officials have no discretion, plaintiff's argument fails. The Code states that prison officials may refuse a request for witnesses if they find that the testimony will be cumulative or irrelevant. 20 Ill. Adm. Code 504.80(h) (2003). Plaintiff argues that the corrections officers operating the H-pod control tower at the time of the alleged event should have been called as witnesses. The report provided to plaintiff after the denial of his witness request found that calling those correctional officers was not necessary as the records reflected that plaintiff's cell had been searched by correctional officers prior to his being placed in the cell. The report further showed that there was no way in which the inmate witnesses could have seen whether plaintiff's cell had been searched. In light of that information, the committee deemed it unnecessary to call those witnesses. The officials had the discretion to do so per the Code. Therefore, defendants had no clear duty to act.

¶ 18 Plaintiff next contends that his due process rights were violated when the adjustment committee did not adequately investigate the charge against him and failed to allow the

witnesses he requested to testify at the hearing. He was demoted to "C" grade and was denied commissary access for one month. He was also ordered to pay restitution to the State.

¶ 19 "Procedural due process claims challenge the constitutionality of the specific procedures used to deny a person's life, liberty, or property." *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201 (2009). A liberty interest exists only where the prison officials restrain the freedom of inmates and such restraint 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). A prisoner does not have a liberty interest in his demotion to C grade and loss of commissary privileges. *Thomas v. Ramos*, 130 F.3d 754, 762 (7th Cir. 1997). Therefore, these two punishments do not challenge plaintiff's due process rights. Plaintiff also had an adequate postdeprivation remedy with respect to the restitution he was ordered to pay. The intentional deprivation of an inmate's property does not trigger a due process violation if the state provides a meaningful postdeprivation remedy. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). Here, plaintiff was able to appeal the adjustment committee's decision by way of filing a grievance. He further appealed the denial of his grievance. These actions are adequate postdeprivation remedies because plaintiff had two other opportunities to argue his cause. Therefore, plaintiff's due process rights were not violated.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Alexander County is affirmed.

¶ 22 Affirmed.