

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).

2013 IL App (4th) 120055-U
NO. 4-12-0055
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
March 13, 2013
Carla Bender
4th District Appellate
Court, IL

DAVID ALCANTAR,)
Plaintiff-Appellant,) Appeal from
v.) Circuit Court of
JOHN MYERS; JAMIE HERNANDEZ; KEITH) Vermilion County
ANGLIN; SARAH JOHNSON; S. A. GODINEZ;) No. 11MR73
JOHN DOE; AND JAY WILLAMAN,)
Defendants-Appellees.) Honorable
Karen E. Wall,
Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justice Appleton concurred in the judgment.
Justice Pope specially concurred.

ORDER

- ¶ 1 Held: The appellate court affirmed the trial court's dismissal of the petitioner's complaint for declaratory judgment and/or common-law writ of *certiorari*, concluding that (1) a declaratory judgment action was not the proper method to adjudicate the petitioner's claims and (2) the conduct of the petitioner's prison disciplinary hearing did not violate his constitutional rights.
- ¶ 2 In April 2011, plaintiff, David Alcantar, an inmate at Pinckneyville Correctional Center, *pro se* filed a complaint for declaratory judgment and/or common-law writ of *certiorari*, against defendants, John Myers (Internal Affairs Investigator, Illinois Department of Corrections (DOC)); Jamie Hernandez (Chairman, DOC Adjustment Committee); Keith Anglin (Warden, Danville Correctional Center); Sarah Johnson (DOC Administrative Review Board (ARB) member); Gladys C. Taylor (Acting Director, DOC (replaced by S.A. Godinez, Director, DOC

by operation of law (see 735 ILCS 5/2-1008(d) (West 2010)); John Doe (confidential informant); and Jay Willaman (Assistant Warden, Danville Correctional Center). Alcantar's complaint alleged certain deficiencies and constitutional violations arising from a DOC disciplinary hearing that found he violated prison rules, which later resulted in the revocation of certain prison privileges.

¶ 3 In August 2011, defendants filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-615 (West 2010)). Following a February 2012 telephonic hearing, the trial court granted defendants' motion to dismiss.

¶ 4 Alcantar *pro se* appeals, raising various arguments related to the trial court's dismissal of his complaint for declaratory judgment and/or common-law writ of *certiorari*. For the reasons that follow, we affirm.

¶ 5 I. BACKGROUND

¶ 6 The following facts were gleaned from Alcantar's eight-page complaint for declaratory judgment and/or common-law writ of *certiorari*, in which he incorporated numerous exhibits pertaining to the conduct of his prison disciplinary proceeding and certain correspondences he wrote to prison officials.

¶ 7 On August 18, 2010, Alcantar, who was then an inmate at the Danville Correctional Center, was "placed in segregation under investigative status to determine his possible involvement in homemade weapons." A joint investigation performed by DOC's internal affairs and intelligence unit resulted in a September 1, 2010, investigative report signed by Myers. Myers' report summarized the statements made by two confidential informants (CIs), which he described as two "previously proven reliable inmate sources." CI No. 1 stated that on August 17,

2010, he was in the prison gym and observed an inmate show a homemade weapon to two other inmates, one of which was Alcantar. CI No. 1 then heard Alcantar ask a question about the weapon, which was silver in color and approximately six inches long with a white cloth handle. Before CI No. 1 could hear the response, the inmates separated. Myers reported that the three inmates CI No. 1 identified were "validated" members of the Latin Kings street gang.

¶ 8 CI No. 2 stated that on August 11, 2010, he overheard three inmates discussing homemade weapons. (The inmates CI No. 2 overheard were not the same inmates CI No. 1 identified.) Specifically, CI No. 2 heard one inmate say that "the Kings are making shanks and giving them to Scrappy." Myers' report noted that (1) the three inmates CI No. 2 identified were Latin Kings members and (2) Alcantar is known as "scrappy." Myers' report also explained the content of an anonymous handwritten note his office received that identified Alcantar and five additional inmates as being involved with the homemade weapon at issue. Myers verified that four of the five additional inmates were also members of the Latin Kings.

¶ 9 Alcantar told Myers that he had no knowledge of, or involvement with, homemade weapons. Despite Alcantar's claim, Myers' report contained the following comments:

"During the interview process, *** Alcantar failed to provide this Office (Internal Affairs) with truthful information pertaining to his involvement in the above incident. *** Alcantar's unwillingness to cooperate extended the scope of this investigation and also caused this Office to conduct numerous, additional interviews *** to ascertain the above information."

¶ 10 On September 1, 2010—the same day that Myers completed the joint investiga-

tion—Alcantar wrote a letter to Anglin, professing his innocence and requesting that Anglin review the circumstances surrounding his segregation. Later that same day, DOC served Alcantar with an "Offender Disciplinary" report that charged him with the following violations of the Illinois Administrative Code: (1) aiding and abetting (20 Ill. Adm. Code 504.Appendix A, 601 (2010)); (2) possessing, manufacturing, or supplying dangerous contraband (20 Ill. Adm. Code 504.Appendix A, 104 (2010)); (3) impeding or interfering with an investigation (20 Ill. Adm. Code 504.Appendix A, 110 (2010)); (4) gang or unauthorized organization activity (20 Ill. Adm. Code 504.Appendix A, 205 (2010)); and (5) giving false information to an employee (20 Ill. Adm. Code 504.Appendix A, 303 (2010)).

¶ 11 The following day, Alcantar sent (1) a one page letter to Anglin, outlining the charges against him and requesting a meeting with Anglin and (2) a 6-page written statement to the adjustment committee, summarizing the testimony of 18 witnesses that he claimed would show he was not in the gym on August 17, 2010, the alleged date the weapon was shown to the other inmates. In the closing paragraph of his letter, Alcantar requested that the adjustment committee "talk to these witnesses and review the records and compare them with what [he had] stated." On September 3, 2010, Alcantar sent a letter to Willaman, again professing his innocence and requesting that Willaman "look into [his] situation." (The record does not show, what, if any, action was taken in response to Alcantar's correspondences.)

¶ 12 On September 10, 2010, Alcantar sent a written statement to the adjustment committee in which he pleaded not guilty to DOC's charges. At a hearing conducted that same day, Alcantar testified that (1) on August 17, 2010, he was not at the gym as alleged by CI No. 1; (2) he is not a gang member; and (3) he truthfully and fully cooperated with the investigation.

Alcantar admitted that he was known as "scrappy," and he knew most of the other inmates identified as members of the Latin Kings, but he denied he was a gang member. Alcantar also corrected Myers' report, noting that an inmate Myer identified as a member of the Latin Kings was instead a member of the Spanish Cobra street gang. Myers confirmed the reliability of the information provided by the CIs as well as the integrity of the report he authored.

¶ 13 Thereafter, the adjustment committee issued a written "final summary report," concluding that Alcantar was guilty of aiding and abetting, impeding or interfering with an investigation, gang or unauthorized organization activity, and giving false information to an employee. The committee also concluded that Alcantar was not guilty of possessing, manufacturing, or supplying dangerous contraband. The committee based its findings on Alcantar's admissions, Myers' testimony, and the CIs observations. Appended to the adjustment committee's final summary report were the aforementioned correspondences Alcantar wrote to the adjustment committee, Anglin, and Willaman.

¶ 14 On September 13, 2010, the chief administrative officer, Anglin, approved the following disciplinary recommendations proffered by the adjustment committee: (1) a reduction to grade 3 status for 3 months; (2) segregation for 3 months; (3) a "transfer (disciplinary)" from Danville Correctional Center; (4) 3 months of restricted commissary privileges; and (5) restricted contact visitation for 6 months. That same day, Alcantar filed a grievance concerning his September 1, 2010, offender disciplinary report, outlining the charges against him and reasserting that he was not in the gym on August 17, 2010, the day the incident alleged by the CI occurred. Alcantar requested his release from segregation and dismissal of the charges against him.

¶ 15 On September 15, 2010, a grievance officer recommended denying Alcantar's

grievance, noting that after a review of "all available information" the adjustment committee's actions in adjudicating the charges against Alcantar showed that it had complied with the appropriate policies and procedures. The following day, Alcantar was served with the adjustment committee's final summary report that was approved by Anglin. On September 20, 2010, Anglin accepted the grievance officer's recommendation and denied Alcantar's grievance. That same day, Alcantar appealed Anglin's denial of his grievance to the ARB. On October 20, 2010, the ARB issued a written decision, recommending, as follows:

"Based on a total review of all available information and a compliance check of the procedural due process safeguards outlined in [section 504 of the Administrative Code (20 Ill. Adm. Code 504, (2010))], this office is reasonably satisfied [that Alcantar] committed the offenses and recommends the grievance be denied. However, this Chairperson recommends the charge of 205 Gang or Unauthorized Organization Activity be deleted as the charge is not substantiated. Due to the deletion of this charge[,], the discipline of [six] months contact visit restriction should be deleted."

(Alcantar had been transferred to Pinckneyville Correctional Center when the ARB issued its decision.) Five days later, the chief administrative officer at Pinckneyville Correctional Center concurred with ARB's recommendations.

¶ 16 Alcantar later filed two additional grievances regarding the conduct of Myers' investigation that resulted in the September 1, 2010, offender disciplinary report. The ARB

returned both grievances, noting that Alcantar's claims had been previously denied.

¶ 17 In April 2011, Alcantar *pro se* filed a complaint for declaratory judgment and/or common-law writ of *certiorari*, against defendants, raising various allegations regarding (1) deficiencies in Myers' investigation; (2) the insufficiency of the evidence presented to convict him; (3) the lack of credibility given to his testimony; (4) the constitutionality of the impeding-or-interfering-with-an-investigation charge; (5) ARB's failure to sufficiently substantiate its denial of his grievance, which Alcantar claimed was based on insufficient evidence; and (6) his innocence given the dismissal of two of the original charges DOC levied against him.

¶ 18 In August 2011, defendants filed a motion to dismiss under section 2-615 of the Civil Code. Following a February 2012 telephonic hearing, the trial court granted defendants' motion to dismiss. In so doing, the court noted that the discipline imposed "did not impose atypical and significant hardship on [Alcantar] in relation to the ordinary incidents of prison life" and thus, "did not implicate a due[-] process liberty interest."

¶ 19 This appeal followed.

¶ 20 II. THE TRIAL COURT'S DISMISSAL OF
ALCANTAR'S COMPLAINT

¶ 21 In his brief to this court, Alcantar parses his claims into three different segments. First, Alcantar seeks a declaratory judgment regarding the validity of the disciplinary proceedings DOC initiated against him. Second, although awkwardly stated in his brief to this court, Alcantar argues essentially that the procedures used by the adjustment committee at his disciplinary hearing violated his right to due process. Last, Alcantar argues that the impeding-or-interfering-with-an-investigation charge (20 Ill. Adm. Code 504.Appendix A, 110 (2010)) leveled by DOC

violated his fifth amendment right against self-incrimination (U.S. Const., amend. V). Before addressing the merits of Alcantar's claims, we set forth our standard of review.

¶ 22 A. Motion To Dismiss Under Section 2-615 of the Code

¶ 23 "A motion to dismiss brought under section 2-615 of the Civil Code attacks the sufficiency of the complaint on the basis that, even assuming the allegations of the complaint to be true, the complaint does not state a cause of action that would entitle the plaintiff to relief." *Heinrich v. White*, 2012 IL App (2d) 110564, ¶ 9, 975 N.E.2d 726. We review *de novo* a trial court's ruling on a section 2-615 motion to dismiss. *Id.*

¶ 24 B. Alcantar's Declaratory-Judgment Claim

¶ 25 As previously explained, Alcantar seeks a declaratory judgment concerning the validity of the disciplinary proceedings DOC initiated against him. In this regard, Alcantar states that he is not alleging a deprivation of a constitutional right but, instead, is merely seeking a preliminary determination that DOC failed to comply with its inmate grievance procedures. Defendants, citing this court's decision in *Alicea v. Snyder*, 321 Ill. App. 3d 248, 748 N.E.2d 285 (2001), contend that based on the facts presented, a motion for declaratory judgment is not the proper method for adjudicating such claims. We agree with defendants.

¶ 26 "[T]o state a cause of action for declaratory judgment, the plaintiff must assert the following: (1) that he has a tangible legal interest with regard to the claim, (2) that the defendant's conduct is opposed to that interest, and (3) that there is an ongoing controversy between the parties that is likely to be prevented or resolved if the court decides the case." *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 18, 966 N.E.2d 1233. (Internal quotation marks omitted.)

"The central purpose of a declaratory judgment action is to allow the court to address the

controversy one step sooner than normal after a dispute has arisen, but before the plaintiff takes steps that would give rise to a claim for damages." *Alicea*, 321 Ill. App. 3d at 253, 748 N.E.2d at 289.

¶ 27 In *Alicea*, 321 Ill. App. 3d at 252, 748 N.E.2d at 289, this court rejected the plaintiff's contention that "a declaratory judgment action is the proper method by which to seek administrative review of prison disciplinary proceedings." In so concluding, we noted the aforementioned central purpose of a declaratory judgment action and explained, as follows:

"Contrary to that central purpose, *Alicea* is not attempting to settle a controversy before it ripens into a legal liability. Nor is he trying to terminate litigation. Instead, *Alicea* is attempting to pursue a claim to *further* future litigation in federal court. Thus, the trial court properly declined to review *Alicea*'s complaint as one seeking a declaratory judgment." (Emphasis in original.)

Alicea, 321 Ill. App. 3d at 253, 748 N.E.2d at 290.

¶ 28 We note that in his brief to this court, Alcantar claims that before he can file a civil action in federal court pursuant to section 1983 of the Civil Rights Act (42 U.S.C. § 1983 (2000)), he must first show a successful challenge to his prison disciplinary hearing, which—as he claims—"is impossible to do if my claims are blocked from consideration."

¶ 29 Here—as in *Alicea*—Alcantar is merely attempting to pursue a claim to further future litigation in federal court. Thus, we reject Alcantar's declaratory judgment claim and, instead, review Alcantar's complaint as a common-law writ of *certiorari*.

¶ 30 C. Alcantar's Due-Process Claim

¶ 31 Alcantar bases his constitutional argument on the claim that he had a liberty interest because DOC's charges against him could have resulted in the loss of good-time credit. From this constitutional footing, Alcantar posits that the procedures used by the adjustment committee at his disciplinary hearing violated his right to due process. We disagree.

¶ 32 "A common-law writ of *certiorari* is a general method for obtaining circuit court review of administrative actions when the act conferring power on the agency does not expressly adopt the Administrative Review Law [(735 ILCS 5/3-101 to 113 (West 2010))] and provides for no other form of review." *Hanrahan v. Williams*, 174 Ill. 2d 268, 272, 673 N.E.2d 251, 253 (1996). Because the statutes regarding prison disciplinary procedures (see 730 ILCS 5/3-8-7 to 3-8-10 (West 2010)) neither adopt the Administrative Review Law nor provide another method of judicial review of disciplinary procedures, *certiorari* review of prison discipline is generally appropriate. *Alicea*, 321 Ill. App. 3d at 253, 748 N.E.2d at 290.

¶ 33 "Illinois inmates have a statutory right to receive good-conduct credits, and thus they have a liberty interest entitling them to procedural safeguards under the due-process clause of the fourteenth amendment." *Lucas v. Taylor*, 349 Ill. App. 3d 995, 1000, 812 N.E.2d 72, 76 (2004). However, the full array of rights due to a defendant in a criminal prosecution does not apply to an individual subject to a prison disciplinary proceeding. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). Instead, the process required in prison disciplinary proceedings includes: (1) notice of the charges at least 24 hours prior to the hearing; (2) an 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 upon which it relied and the reasons for the disciplinary action. *Wolff*, 418 U.S. at 563-66. In addition, the findings must be

supported by some evidence in the record. *Superintendent, Massachusetts Correctional Institution at Walpole v. Hill*, 472 U.S. 445, 454-55 (1985).

¶ 34 In this case, Alcantar was afforded all the procedural safeguards under the due-process clause of the fourteenth amendment—that is, his complaint for common-law writ of *certiorari* shows that he was apprised of DOC's charges at least 24 hours prior to his hearing, he submitted documentation regarding the expected testimony of 18 witnesses in accordance with section 504.80(f)(2) of Title 20 of the Administrative Code (20 Ill. Adm. Code 504.80(f)(2) (2010)), and, thereafter, he received a written statement by the ARB concerning the evidence it relied upon in finding him guilty of certain charges. In addition, our review of the basis the adjustment committee articulated in support of its findings reveals that the committee met its "some evidence" burden. Accordingly, we conclude that Alcantar failed to state a cause of action entitling him to *certiorari* relief.

¶ 35 D. Alcantar's Fifth-Amendment Claim

¶ 36 Alcantar also argues that the impeding-or-interfering-with-an-investigation (20 Ill. Adm. Code 504.Appendix A, 110 (2010)) charge levied by DOC violated his fifth amendment right against self-incrimination (U.S. Const., amend. V). We disagree.

¶ 37 Offense No. 110, which is contained within Appendix A of section 504 of Title 20 of the Administrative Code, entitled "Impeding or Interfering with an Investigaton," prohibits an inmate from "[o]bstructing, impeding, or refusing to provide information relevant to an investigation." 20 Ill. Adm. Code 504.Appendix A, 110, (2010).

¶ 38 The fifth amendment to the United States Constitution provides, in pertinent part, as follows:

"No person shall be *** compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law[.]" U.S. Const., amend. V.

¶ 39 In support of his argument, Alcantar contends that the plain language of offense No. 110 compels him to cooperate because if he chooses otherwise, he is exposed to the subjective "whims" of the DOC official who Alcantar claims then determines solely "who is charged and what constitutes guilt."

¶ 40 We first reject Alcantar's inference that Myers was both the investigating officer and a member of the adjustment committee that ultimately determined Alcantar's guilt because that claim is not supported by the proceedings that occurred in this case. We similarly reject Alcantar's compulsion claim because his complaint for common-law writ of *certiorari* shows that he *voluntarily* provided both written and verbal evidence during Myers investigation and the adjustment committee's September 2010 hearing. The adjustment committee's apparent agreement with Myers' assessment of Alcantar's lack of credibility does not implicate Alcantar's right against self-incrimination.

¶ 41 Moreover, even if Alcantar refused to cooperate or testify at a prison disciplinary hearing, his recalcitrant attitude could have been considered by the adjustment committee in a detrimental fashion without implicating the fifth amendment. See *Giampa v. Illinois Civil Service Comm'n*, 89 Ill. App. 3d 606, 613, 411 N.E.2d 1110, 1116 (1980) (citing *Baxter v. Palmigiano*, 425 U.S. 308, 320, (1976)) ("[T]he fifth amendment did not forbid the drawing of adverse inferences against a state prison inmate for his failure to testify at a prison disciplinary proceeding. His silence, along with other evidence, may be used to support an adverse decision

by a disciplinary board."). Accordingly, we conclude that Alcantar failed to state a cause of action entitling him to the relief sought.

¶ 42

III. CONCLUSION

¶ 43

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

¶ 44

Affirmed.

¶ 45 JUSTICE POPE, specially concurring.

¶ 46 I write separately to note plaintiff ultimately was found "not guilty" of the substantive charges of aiding dangerous contraband and gang activity, but guilty of impeding an investigation and giving false information to an employee. As the majority notes, plaintiff voluntarily provided both written and verbal evidence during the investigation and the September 2010 hearing. Plaintiff was vindicated on the substantive charges, so it is difficult to understand how DOC could find him guilty of impeding the investigation and lying. Nevertheless, as the trial court found, the discipline imposed did not affect a liberty interest and plaintiff was provided with due process. Even though I might disagree with DOC's findings, it is not the function of this court to serve as an extra level of review on the merits, especially where, as here, plaintiff lost no good-time credit and received notice and a hearing.