

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) 120698-U

NO. 4-12-0698

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
March 18, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

EDWARD JORDAN,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Livingston County
SALVADOR GODINEZ and the ADMINISTRATIVE	)	No. 11MR99
REVIEW BOARD,	)	
Defendants-Appellees.	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Steigmann and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where plaintiff failed to exhaust his administrative remedies, dismissal of petition for *mandamus* was affirmed.

¶ 2 I. BACKGROUND

¶ 3 Plaintiff, Edward Jordan, an inmate in the Illinois Department of Corrections (DOC) filed a petition for *mandamus* in September 2011 claiming (1) a disciplinary proceeding was improper; and (2) the subsequent discipline violated his due-process rights. The Attorney General for the State of Illinois (Attorney General) filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). Plaintiff filed a written response. The trial court granted the motion to dismiss. Plaintiff filed a timely notice of appeal.

¶ 4 I. BACKGROUND

¶ 5 On September 27, 2011, plaintiff filed a "Petition of Mandamus" pursuant to

article XIV of the Code of Civil Procedure (735 ILCS 5/14-101 to 14-109 (West 2010)) against the Director of DOC, Salvador Godinez, and the DOC Administrative Review Board. In summary, plaintiff complains his disciplinary report was improper and incomplete because it included no times, places, or dates of the incidents for which plaintiff was disciplined. He also claimed the titles of the various offenses were incorrect. Plaintiff contends the disciplinary proceedings violated due process and Illinois rules governing disciplinary proceedings.

¶ 6 A Logan Correctional Center (Logan) officer found several items of contraband, including prohibited magazines, certain toiletries, shoelaces, and eyeglasses not available at Logan in plaintiff's cell and confiscated them. Plaintiff admitted (1) the contraband was his and (2) he had arranged for his wife to send the contraband through a third party.

¶ 7 According to the disciplinary report, the items were observed on April 6, 2011. That same day, the disciplinary report was furnished to plaintiff, as evidenced by his signature thereon. The disciplinary report contained a statement of procedural rights available to plaintiff, including the right to present a written or oral statement, the right to call witnesses, and the right to a hearing. At the hearing before the Adjustment Committee on April 11, 2011, plaintiff was present and admitted the contraband was his. He called no other witnesses. Following the hearing, he was given one-year reduction in status to C-Grade, one-year segregation, a disciplinary transfer, and loss of one year of good-conduct credits.

¶ 8 Plaintiff did not file any type of grievance with respect to the disciplinary proceedings. Rather, he filed this *mandamus* petition, asking the trial court to order DOC to release him from segregation, restore his visitation privileges, return him to A-Grade status, and expunge the statement on his disciplinary report he violated federal or state law by having

contraband brought in to Logan.

¶ 9 Defendant filed a motion to dismiss the petition pursuant to section 2-615 (735 ILCS 5/2-615 (West 2010)). In his memorandum of law, defendant argued *mandamus* requires a demand for the relief sought must first be made upon defendant and refused. Defendant also argued plaintiff failed to state a claim for a due-process violation, as defendant received all the process that was due.

¶ 10 On June 27, 2012, the trial court granted defendant's motion to dismiss. The court found plaintiff's own exhibits, attached to his petition, demonstrated he was given written notice of the charges, a hearing date more than 24 hours thereafter, the opportunity to call witnesses, and a written statement of the committee's findings. The court did not address plaintiff's failure to exhaust his administrative remedies.

¶ 11 II. ANALYSIS

¶ 12 This court reviews dismissals pursuant to section 2-615 (735 ILCS 5/2-615 (West 2010)) under a *de novo* standard of review. Under section 2-615, "[d]ismissal is appropriate only where, viewing the allegations in the light most favorable to the plaintiff, it is clear that no set of facts can be proved under the pleadings that will entitle the plaintiff to relief." *Ford v. Walker*, 377 Ill. App. 3d 1120, 1124, 888 N.E.2d 123, 127 (2007) (quoting *Gilchrist v. Snyder*, 351 Ill. App. 3d 639, 642, 814 N.E.2d 147, 150 (2004)).

¶ 13 As we stated in *Ford*, a party aggrieved by an administrative decision cannot seek judicial review unless he has first pursued all available administrative remedies. *Id.* at 1124, 888 N.E.2d at 126-27. At the bottom of the Adjustment Committee Final Summary Report, the following language appears.

"The committed person has the right to appeal an adverse decision through the grievance procedure established by Department Rule 504: Subpart F."

The summary report was served on plaintiff on April 19, 2011. As noted above, the record does not reflect plaintiff filed any grievance concerning the discipline imposed on him.

¶ 14 Under the doctrine of exhaustion of administrative remedies, a party aggrieved by an administrative decision is not able to seek judicial review without first pursuing any and all administrative remedies available. *Johnson v. Department of Corrections*, 368 Ill. App. 3d 147, 150, 857 N.E.2d 282, 285 (2006). This doctrine applies to grievances filed by inmates, including grievances alleging a constitutional violation. *Behringer v. Page*, 204 Ill. 2d 363, 376, 789 N.E.2d 1216, 1225 (2003).

¶ 15 Here, plaintiff apparently filed no grievance concerning his discipline. Thus, he failed to state a clear right for *mandamus* relief because his failure to exhaust administrative remedies defeated his claims. *Johnson*, 368 Ill. App. 3d at 150, 857 N.E.2d at 285; see also *Caruth v. Quinley*, 333 Ill. App. 3d 94, 99, 775 N.E.2d 224, 228 (2002) (inmate failed to state a clear right to *mandamus* relief because he failed to exhaust administrative remedies).

¶ 16 Moreover, if we were able to reach the merits of plaintiff's claim, he received all the process due him. 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 (3) a written statement by the fact finder of the evidence relied on to support a finding of guilt. *Ford*, 377 Ill. App. 3d at 1125, 888 N.E.2d at 127.

¶ 17 Here, plaintiff received the disciplinary report on April 11, five days prior to the

hearing. The report included notice to plaintiff he could call witnesses and present documentary evidence, and following the hearing he was presented written findings to support the finding of guilt. Indeed, the committee noted plaintiff admitted at the hearing the contraband belonged to him and he was involved in the planning to get it into Logan. Plaintiff received due process.

¶ 18

### III. CONCLUSION

¶ 19 For the reasons stated, we affirm the trial court's judgment dismissing plaintiff's petition for *mandamus*.

¶ 20 Affirmed.