

NOTICE
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2013 IL App (4th) 120795-U

NO. 4-12-0795

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 26, 2013
Carla Bender
4th District Appellate
Court, IL

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| CHARLES DONELSON, |) | Appeal from |
| Plaintiff-Appellant, |) | Circuit Court of |
| v. |) | Sangamon County |
| S.A. GODINEZ, Director, Department of Corrections; |) | No. 12MR156 |
| and RANDY PFISTER, |) | |
| Defendants-Appellees. |) | Honorable |
| |) | John Schmidt, |
| |) | Judge Presiding. |

JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting defendants' motions to dismiss plaintiff's complaint for *mandamus* and other relief.

¶ 2 In February 2012, plaintiff, Charles Donelson, an inmate in the Illinois Department of Corrections (Department), filed a *pro se* complaint for *mandamus* relief, a writ of *certiorari*, and a declaratory judgment against defendants, S.A. Godinez and Randy Pfister. Defendants filed motions to dismiss, which the trial court granted.

¶ 3 On appeal, plaintiff argues the trial court erred in granting defendants' motions to dismiss his complaint for *mandamus* and other relief. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On July 12, 2011, plaintiff, while an inmate at Western Illinois Correctional Center, was served with a disciplinary report charging him with insolence, unauthorized

movement, and disobeying a direct order. The report stated that on July 11, 2011, a corrections officer gave plaintiff several direct orders to close the B-wing door because he was not properly dressed to leave the wing and he did not have permission to leave the wing. Plaintiff refused to move so the door could be closed. When plaintiff gave his identification to the officer, he said "I'll fix you. I'll have your job, bitch."

¶ 6 The bottom portion of the disciplinary report provided space for plaintiff to request the adjustment committee to consider calling any witnesses during its hearing and directed him to detach and return the slip to the committee prior to the hearing. That portion of the report is still attached. On the lines provided for the naming of witnesses, plaintiff wrote "R1 B-wing camera" and "WICC security camera," which he stated would show he "was on the wing, control officer open door." He also listed inmates Leamon and Cox as witnesses who could testify plaintiff stood on the wing and "did not hold door that I was talking to C/O Roberts and that I gave C/O my ID. I did not say a word to Watson. Watson been harassing me for 2 months."

¶ 7 On July 14, 2011, plaintiff was served with another disciplinary report, charging him with violent assault of any person, assaulting any person, and dangerous disturbances. The report stated that on July 11, 2011, plaintiff sidestepped Officers Roberts and Pool as they closed the wing door. Plaintiff ran off the wing and into the foyer. He ran directly toward Officer Watson, drew back his right arm with a closed fist, and struck Watson in the left facial area. Before Watson could get out of his chair and onto his feet, plaintiff continued to swing his closed fist and hit Watson several times in the face. After both Watson and plaintiff fell to the floor, plaintiff continued his assault on him. Officers Roberts and Pool responded and grabbed

plaintiff, who continued to resist by "kicking, twisting and jerking his arms in an attempt to get away." He was eventually restrained and placed in segregation.

¶ 8 The witness request form is still attached to the disciplinary report. On the lines provided, plaintiff requested the adjustment committee consider calling as a witness the "R1 B-wing camera," which could testify that Officers Roberts and Pool were standing in front blocking him and telling him to go through the door. He also sought phone recordings to show he ran to a door for a lieutenant because Roberts would not call one. Plaintiff claimed he was assaulted.

¶ 9 Thereafter, plaintiff was transferred to Pontiac Correctional Center. On July 20, 2011, the adjustment committee held one hearing on the two disciplinary reports. Plaintiff pleaded not guilty and submitted a written statement indicating Officer Watson made threats toward him and he had asked for a lieutenant when Watson first started his verbal attack.

¶ 10 The adjustment committee found plaintiff guilty of insolence, unauthorized movement, and disobeying a direct order as to the first incident. As to the second incident, the adjustment committee found plaintiff guilty of assaulting staff but not guilty of violent assault and dangerous disturbances. The adjustment committee's report included a basis for its decisions on both incidents. The final disciplinary action included revocation of one year of good-conduct credit, one year of demotion to C-grade status, one year of segregation, one year of audio/visual restriction, and six months of contact visit restriction.

¶ 11 On August 15, 2011, plaintiff filed a grievance, claiming his due-process rights were violated when (1) the adjustment committee failed to call his witnesses, inmates Cox and Leamon and the security camera and (2) the adjustment committee's decision was not supported by "some evidence."

¶ 12 The grievance officer reviewed the disciplinary report and the adjustment committee's final report. The officer determined the report complied with Department regulations, the report appropriately reflected the charges, plaintiff had been served a copy of the report, plaintiff did not request witnesses, and the basis for decision indicated two complete rationales on why the adjustment committee found plaintiff guilty. After a compliance check of the procedural due-process safeguards, the grievance officer recommended the grievance be denied. Defendant Pfister, as chief administrative officer, concurred.

¶ 13 Plaintiff appealed the denial to defendant Godinez, the Department director. On December 14, 2011, the administrative review board recommended the grievance be denied. Director Godinez concurred.

¶ 14 In February 2012, plaintiff filed a *pro se* complaint for *mandamus* relief, a writ of *certiorari*, and a declaratory judgment against defendants. Plaintiff alleged defendants refused to perform specific ministerial duties to ensure his due-process rights were protected during the adjustment committee proceedings. Plaintiff claimed the adjustment committee refused to call his witnesses and did not provide a reason for excluding them. Further, plaintiff claimed the decision finding him guilty was not supported by the evidence. Plaintiff asked the trial court to order defendants to provide a hearing consistent with due process or expunge the disciplinary ticket and restore his privileges.

¶ 15 In April 2012, defendant Godinez filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)), asserting his duties in reviewing the adjustment committee's decision are discretionary and plaintiff was not entitled to *mandamus* or any other relief. In July 2012, defendant Pfister also

filed a motion to dismiss.

¶ 16 In August 2012, the trial court held a telephone conference on the motions. The court found plaintiff had been afforded due process in his disciplinary hearing. The court granted the motions to dismiss. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Plaintiff argues the trial court erred in dismissing his complaint for *mandamus* relief, a writ of *certiorari*, and for a declaratory judgment. We disagree.

¶ 19 A. Standard of Review

¶ 20 In the case *sub judice*, the trial court granted defendants' motions to dismiss 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 B. *Mandamus*

¶ 22 "An allegation of a due-process-rights violation *** states a cause of action in

mandamus." *Dye v. Pierce*, 369 Ill. App. 3d 683, 687, 868 N.E.2d 293, 296 (2006). "*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). 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).

¶ 23 1. *Witnesses at the Adjustment Committee Hearing*

¶ 24 Plaintiff argued he was entitled to *mandamus* relief because his due-process rights were violated when his requested witnesses were not called at the adjustment committee hearing.

¶ 25 An inmate is entitled to due process at his disciplinary proceedings. See *Wolff v. McDonnell*, 418 U.S. 539, 563-66 (1974).

"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 present documentary evidence when consistent with institutional safety and correctional goals, and (3) a written statement by the fact finder of the evidence relied upon to support a finding of guilt." *Ford v. Walker*, 377 Ill. App. 3d 1120, 1125, 888 N.E.2d 123, 127 (2007).

¶ 26 "Department rules specify that inmates may request that a witness be interviewed, by making a request in writing on the space at the bottom of the disciplinary report before the disciplinary hearing." *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1118, 942 N.E.2d 758, 764 (2011); see also 20 Ill. Adm. Code 504.80(f)(2), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003). "The adjustment committee may deny an inmate's witness request 'if the witness's testimony would be irrelevant, cumulative, or would jeopardize the safety or disrupt the security of the facility, among other reasons.' " *Ford*, 377 Ill. App. 3d at 1125, 888 N.E.2d at 128 (quoting *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1131, 815 N.E.2d 443, 452 (2004)). " 'Since it is within the committee's discretion to deny an inmate's witness request, such a decision may not be challenged in a *mandamus* petition.' " *Taylor*, 406 Ill. App. 3d at 1118, 942 N.E.2d at 764 (quoting *Ford*, 377 Ill. App. 3d at 1125, 888 N.E.2d at 128).

¶ 27 Here, the disciplinary reports include a space where plaintiff could request the adjustment committee consider calling his witnesses. That portion of the report is to be detached and returned to the adjustment committee prior to the hearing. Plaintiff indicated he wanted the security cameras to be used as witnesses and listed "Leamon/Cox" as inmates who could testify. However, the slips are still attached to the reports. Moreover, the adjustment committee report indicates no witnesses were requested. As plaintiff failed to follow Department rules in requesting witnesses, and as it is a matter of discretion on the part of the adjustment committee to deny a witness request, plaintiff has not shown he is entitled to *mandamus* relief on this issue.

¶ 28 2. *Evidence Supporting the Adjustment Committee Decision*

¶ 29 Plaintiff argued his due-process rights were violated when the adjustment committee failed to find "some evidence" necessary to find him guilty. To find an inmate guilty

of a charged offense, the adjustment committee "must be reasonably satisfied there is some evidence that the offender committed the offense." 20 Ill. Adm. Code 504.80(j)(1), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003). If the adjustment committee finds the inmate guilty, the members must issue "a statement as to their reasons for the finding." 20 Ill. Adm. Code 504.80(l)(2), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003).

¶ 30 Here, the adjustment committee indicated it read the reports and then provided the bases for its decisions in finding plaintiff guilty of the alleged offenses. The adjustment committee also noted the incident reports substantiating the incident were attached. 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). The disciplinary reports were sufficiently detailed in these two incidents, and the adjustment committee's recitation of the bases for finding plaintiff guilty was sufficient to satisfy due process.

¶ 31 C. Writ of *Certiorari*

¶ 32 The trial court also dismissed plaintiff's complaint for writ of *certiorari*. "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 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 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 v. Snyder*, 321 Ill. App. 3d 248, 253, 748 N.E.2d 285, 290 (2001).

¶ 33 Here, plaintiff did not allege facts showing his disciplinary proceeding violated his due-process rights. Because plaintiff received the process he was due, he failed to state a cause of action entitling him to *certiorari* relief.

¶ 34 D. Declaratory Relief

¶ 35 Plaintiff also sought declaratory relief. In his brief on appeal, plaintiff claims such relief was warranted because his due-process rights were violated and defendants' actions failed to conform with the applicable law. However, we have found plaintiff's due-process rights were not violated at the proceedings before the adjustment committee. Thus, plaintiff's claim for declaratory relief is without merit.

¶ 36 E. Unified Code of Corrections

¶ 37 Plaintiff's last argument asks this court to declare section 3-8-7(e)(4) of the Unified Code of Corrections (730 ILCS 5/3-8-7(e)(4) (West 2012)) unconstitutional because it does not follow the standards of *Wolff*. Plaintiff's two-sentence argument is conclusory, undeveloped, and provides no basis for this court to rule on the constitutionality of section 3-8-7(e)(4).

¶ 38 III. CONCLUSION

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

¶ 40 Affirmed.