2017 IL App (3d) 160650-U

Order filed November 9, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

WENDELL WEAVER,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	
	)	Appeal No. 3-16-0650
DONALD STOLWORTHY, EDMUND BUTKIEWICZ, CHARLES BEST, and TARRY WILLIAMS,	)	Circuit No. 15-MR-2742
	)	
	)	Honorable
	)	Bennett J. Braun,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in dismissing plaintiff's *mandamus* complaint with prejudice.

¶ 2 Plaintiff, Wendell Weaver, appeals from the circuit court's order dismissing with prejudice his complaint for *mandamus* against defendants Donald Stolworthy, Edmund Butkiewicz, Charles Best, and Tarry Williams. We affirm.

¶ 3 FACTS

¶ 4 Plaintiff, an inmate at Stateville Correctional Center (Stateville), filed a complaint for *mandamus* against Stolworthy, director of the Illinois Department of Corrections (DOC); Williams, chief administrative officer of Stateville; and Best and Butkiewicz, members of the adjustment committee at Stateville. The complaint related to a prison disciplinary proceeding instituted against plaintiff. Specifically, correctional officer Valerie Jones prepared a disciplinary ticket stating that plaintiff asked another correctional officer, C. Koestner, why inmates were no longer allowed to play cards in the kitchen. Jones told plaintiff that he should quit his job in the kitchen if he did not want to follow the rules. Plaintiff responded, "Why the fuck don't you quit your job, no one was talking to you!" Jones told plaintiff to leave, and plaintiff said, "I will be out soon and I'll be to see [you]."

¶ 5 Plaintiff alleged that in response to the disciplinary report, he requested to call Koestner, Calvin Clay, and Demond Cole, as witnesses in the disciplinary proceeding because they witnessed the incident. Plaintiff also requested to call four witnesses who would testify as to "name calling, disrespectful and unfair treatment by [Jones]."

¶ 6 The adjustment committee interviewed Clay, who stated that plaintiff and Jones had a verbal altercation, but he did not know what was said. The adjustment committee's final summary report does not indicate that they interviewed any of the other witnesses plaintiff requested. The report states that plaintiff pled not guilty to the disciplinary ticket. The report shows that the adjustment committee found that plaintiff committed the violations of insolence and intimidation or threats based on Jones's account of the incident. The report stated the specific statements from Jones's disciplinary report on which they relied, including plaintiff's statements to Jones. The adjustment committee imposed a term of three months' C-grade status,

three months' segregation, and three months' commissary restriction. The report stated that the basis for the discipline was the nature of the offense.

¶ 7 Plaintiff's complaint for *mandamus* alleged that defendants Best and Butkiewicz violated plaintiff's due process rights by failing to call, interview, and summarize the statements of witnesses plaintiff wished to call. The complaint also alleged that Best and Butkiewicz violated plaintiff's due process rights by failing to provide plaintiff with a written statement of their reasons for failing to interview his witnesses, the evidence they relied on in the disciplinary proceeding, and their reasons for imposing disciplinary action on him. The complaint requested that the court issue an order of *mandamus* directing defendant Stolworthy or his successor to expunge plaintiff's disciplinary report or, alternatively, direct defendants to conduct a new hearing where all plaintiff's requested witnesses were called.

¶ 8 Plaintiff attached to his complaint the disciplinary ticket prepared by Jones, the adjustment committee's final summary report, and several other documents.

¶ 9 Defendants filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). The circuit court dismissed the complaint with prejudice.

¶ 10 ANALYSIS

¶ 11 Defendant contends that the circuit court erred in dismissing his complaint for *mandamus* with prejudice pursuant to section 2-615 of the Code. "The question presented by a section 2-615 motion to dismiss is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Beahringer v. Page*, 204 Ill. 2d 363, 369 (2003). "A cause of action will not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved which will

entitle the plaintiff to recover." *Id*. We review *de novo* the dismissal of plaintiff's complaint under section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)). *Beahringer*, 204 Ill. 2d at 369.

¶ 12 "*Mandamus* is an appropriate remedy to compel DOC to conduct disciplinary hearings consistent with due process." *Armstrong v. Snyder*, 336 Ill. App. 3d 567, 569 (2003). The fourteenth amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend. XIV, § 1. Thus, to show that his due process rights were violated, plaintiff must show that the State deprived him of a liberty interest. See *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1116 (2011). In the context of prison inmates, liberty interests "will be generally limited to freedom from restraint which *** 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).

¶ 13 Prisoners have no cognizable liberty interest in being free from segregation for a limited amount of time or in their grade status. *Taylor*, 406 Ill. App. 3d at 1117; *Hoskins v. Lenear*, 395 F.3d 372, 375 (2005). Additionally, inmates have no right to commissary. *Ruhl v. Department of Corrections*, 2015 IL App (3d) 130728, ¶ 25 ("[Inmates] have no right to a commissary at all, where the creation and maintenance of a prison commissary falls completely within the discretion of the DOC.")

¶ 14 Here, the only disciplinary action taken against plaintiff was a temporary term of segregation, C-grade status, and commissary restriction. Thus, plaintiff was not entitled to due process in the disciplinary proceeding because none of the disciplinary action taken against plaintiff implicated a liberty interest. *Williams v. Ramos*, 71 F.3d 1246, 1250 (7th Cir. 1995) ("Where there is no liberty interest, there can be no due process violation.").

¶ 15 Even if plaintiff were entitled to due process in the disciplinary proceeding, the claims in his *mandamus* complaint would still fail.

> "[T]he United States Supreme Court has held that under the principles of due process, prisoners are entitled to the following process in disciplinary proceedings: (1) notice of the disciplinary charges at least 24 hours prior to the hearing; (2) when consistent with institutional safety and correctional goals, an opportunity to call witnesses and present documentary evidence in their defense; and (3) a written statement by the fact finder of the evidence relied on in finding the prisoner guilty of committing the offense and the reasons for the disciplinary action." *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1127 (2004).

¶ 16 First, plaintiff's claim that the adjustment committee violated his due process rights by failing to call all the witnesses he requested is not cognizable as a *mandamus* claim. " '*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 (2003) (quoting *Crump v. Illinois Prisoner Review Board*, 181 Ill. App. 3d 58, 60 (1989)). The adjustment committee had the discretion not to call plaintiff's requested witnesses if the witnesses' testimony " 'would be irrelevant, cumulative, or would jeopardize the safety or disrupt the security of the facility, among other reasons.' " *Ford v. Walker*, 377 Ill. App. 3d 1120, 1125 (2007) (quoting *Cannon*, 351 Ill. App. 3d at 1131). Because the adjustment committee had the discretion to deny plaintiff's witness requests, plaintiff may not challenge this decision in a *mandamus* action. *Id.*

¶ 17 Additionally, plaintiff's claim that defendants failed to provide him with an adequate written statement of the evidence they relied on and the reasons for their disciplinary action is

belied by the final summary report that plaintiff submitted as an exhibit along with his complaint. "[T]o satisfy minimum due process requirements, a statement of reasons should be sufficient to enable a reviewing body to determine whether good-time credit has been revoked for an impermissible reason or for no reason at all. While *detailed* finding are *not* required, something beyond mere conclusory statements is required." (Emphases in original.) *Thompson v. Lane*, 194 Ill. App. 3d 855, 864 (1990). The *Thompson* court found that the committee's statement was inadequate where it did not point out the essential facts on which its inferences were based, but rather merely referred to the disciplinary report. *Id.* Here, the final summary report set out facts contained in the disciplinary report as the basis for its decision, and it stated that the recommended disciplinary action was based on the nature of the offense.

¶ 18 CONCLUSION

¶ 19 The judgment of the circuit court of Will County is affirmed.

¶ 20 Affirmed.