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2018 IL App (4th) 160896-U

NO. 4-16-0896

FILED
February 2, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

TYWON KNIGHT, Plaintiff-Appellant, v. DONALD STOLWORTHY, Director of the Illinois Department of Corrections; SALVADOR GODINEZ, former Director of the Illinois Department of Corrections; MARCUS HARDY, Deputy Director of the Illinois Department of Corrections for the Central District; RANDY S. PFISTER, Warden of Pontiac Correctional Center; R. SNYDER, Investigating Officer; J. STARKEY, Reporting Officer; SCOTT HOLTE, Adjustment Committee Chairperson; ABERADO A. SALINAS, Adjustment Committee Member; K. SANDLIN, Grievance Officer; BILLIE W. GREER, Administrative Review Board Person, Defendants-Appellees.	)	Appeal from Circuit Court of Livingston County No. 15MR88 Honorable Jennifer H. Bauknecht, Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the circuit court properly dismissed plaintiff's petition for a writ of *certiorari* and relief from a void judgment where plaintiff received due process during his prison disciplinary proceedings and plaintiff failed to state a claim that he was denied equal protection under the law.

¶ 2 Plaintiff, Tywon Knight, *pro se*, is an inmate at Pontiac Correctional Center within the Illinois Department of Corrections (Department). Defendants are various officials at the prison.

¶ 3 In October 2014, plaintiff was charged with engaging in unauthorized gang activity as outlined in Appendix A of title 20 of section 504 of the Illinois Administrative Code (Rule 205) (20 Ill. Adm. Code 504.Appendix A (2014)). Following a hearing in which the adjustment committee found he violated Rule 205, plaintiff received sanctions that included a loss of good-conduct credit. Plaintiff's grievance was later denied.

¶ 4 In June 2015, plaintiff filed in the circuit court of Livingston County a petition for a writ of *certiorari* and for relief from a void judgment, asserting (1) his due process rights were violated during the disciplinary proceedings, and (2) Rule 205 was unconstitutional in that it violated his right to equal protection. In October 2015, defendants filed a motion to dismiss pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-619(a)(9) (West 2014)), asserting the record affirmatively rebutted plaintiff's claims. The court agreed and dismissed plaintiff's claim.

¶ 5 Plaintiff appeals, arguing (1) defendants violated his right to due process during the disciplinary proceedings, and (2) Rule 205 is unconstitutional because it violated his right to equal protection. For the following reasons, we affirm.

¶ 6 I. BACKGROUND

¶ 7 In October 2014, plaintiff received a disciplinary report for engaging in gang or unauthorized activity in violation of Rule 205 (20 Ill. Adm. Code 504.Appendix A (2014)). Plaintiff provided a written response stating he was not guilty of the charges. He requested no witnesses in his response, nor did he fill out the portion of the disciplinary report designated for witness requests.

¶ 8 According to the disciplinary report, during an investigation spanning from August to October 2014, two confidential sources independently identified plaintiff as a leader of

the Black P Stones security threat group and disclosed that plaintiff was using his influence to coerce members of the group into participating in unauthorized organizational activities. These activities included refusing food, yard time, showers, and communications with staff. In all, more than 60 inmates participated in the protest. The group was also attempting to organize an outside protest. The disciplinary report indicated plaintiff personally participated in the protest from September 25, 2014, through October 1, 2014, by refusing food, showers, yard privileges, and communication with staff.

¶ 9 On this evidence, the adjustment committee found plaintiff violated Rule 205. The adjustment committee noted it spoke with Internal Affairs, which vouched for the truthfulness and accuracy of the confidential sources. The chief administrative officer concurred with the Board's decision. Plaintiff received one year of C-grade status, one year in segregation, revocation of one year of good-conduct credit, and a six-month contact visit restriction.

¶ 10 Plaintiff filed a grievance, claiming his disciplinary proceedings violated his right to due process because (1) the allegations were too vague, and (2) the adjustment committee failed to consider the relevant evidence or allow him to question individuals he allegedly coerced into participating in the protest. He also argued Rule 205 was unconstitutional because it contains "a status-based deprivation which is contrary to equal protection and due process of law." The grievance officer denied the grievance, finding the proceedings complied with the Department's procedural rules. The chief administrative officer concurred with the grievance officer's decision. In March 2015, the Department Director declined to address plaintiff's appeal after incorrectly finding the appeal was untimely filed.

¶ 11 In June 2015, plaintiff filed a petition for (1) a common-law writ of *certiorari* pursuant to section 3-101 of the Civil Code (735 ILCS 5/3-101 (West 2014)); and (2) relief from

a void judgment under section 2-1401 of the Civil Code (735 ILCS 5/2-1401 (West 2014)). In his supporting memorandum of law, plaintiff asserted he was denied due process during the disciplinary proceedings. Also, plaintiff sought *mandamus* relief, arguing Rule 205 was unconstitutional in that it violated his right to equal protection.

¶ 12 In October 2015, defendants moved to dismiss the complaint pursuant to section 2-619(a) of the Civil Code (735 ILCS 5/2-619(a) (West 2014)), asserting the record affirmatively rebutted the claims in plaintiff's petition. Defendants further argued plaintiff failed to state a cause of action that Rule 205 violated his constitutional right to equal protection.

¶ 13 In April 2016, the circuit court granted defendants' motion to dismiss, finding (1) the record demonstrated plaintiff received due process, and (2) plaintiff failed to state a cause of action that Rule 205 is unconstitutional.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, plaintiff asserts the trial court erred by dismissing his petition because (1) he was denied due process during his disciplinary proceedings, and (2) Rule 205 is facially unconstitutional. We address these arguments in turn.

¶ 17 A. Disciplinary Proceedings

¶ 18 Plaintiff first asserts the circuit court erred by dismissing his petition for a writ of *certiorari* as it relates to his disciplinary proceedings. Prison disciplinary procedures neither adopt the Administrative Review Law nor provide another method of judicial review of disciplinary procedures; thus, *certiorari* review of prison discipline is generally appropriate. *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253, 748 N.E.2d 285, 290 (2001). Ordinarily, a reviewing court will not interfere with an agency exercising its discretionary authority unless the agency's

exercise of that discretion is arbitrary and capricious, or where its decision is against the manifest weight of the evidence. *Hanrahan v. Williams*, 174 Ill. 2d 268, 272-73, 673 N.E.2d 251, 254 (1996).

¶ 19 Defendants filed a motion to dismiss plaintiff's petition for a writ of *certiorari* pursuant to section 2-619(a) of the Civil Code (735 ILCS 5/2-619(a) (West 2014)). A motion to dismiss under section 2-619(a)(9) of the Civil Code admits the legal sufficiency of the petition, admits all well-pleaded facts and all reasonable inferences therefrom, and asserts an affirmative matter outside the petition bars or defeats the cause of action. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31, 988 N.E.2d 984. We construe the pleadings in the light most favorable to the nonmoving party, and we will grant the motion to dismiss only where the plaintiff can prove no set of facts to state a cause of action. *Id.* Our review is *de novo*. *Id*.

¶ 20 In this instance, we examine whether an affirmative matter—the record of the disciplinary proceedings—defeats plaintiff's petition for *certiorari* relief. In *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Supreme Court outlined the due-process rights afforded to inmates. Inmates are entitled to (1) notice of disciplinary charges at least 24 hours prior to disciplinary proceedings; (2) the opportunity to call witnesses and present evidence in their defense, when consistent with institutional safety and correctional goals; and (3) a written statement by the disciplinary committee outlining the evidence relied upon in reaching its decision. *Id.* at 563-66.

¶ 21 1. *Notice of Charges*

¶ 22 The record reflects plaintiff received notice of his disciplinary charges more than 24 hours prior to the disciplinary hearing, as reflected by the signature of a Department officer indicating he served the paperwork on plaintiff on October 16, 2014. The disciplinary hearing

was held October 21, 2014, well in excess of 24 hours later. See *id.* at 563. Moreover, the disciplinary charges reflect plaintiff was charged with a violation of Rule 205 for using his position as a leader of the Black P Stones, a security threat group, to engage in unauthorized organizational activity by (1) putting together a list of demands for inmates; (2) protesting by refusing food, yard time, and communication with officers; (3) organizing outside protests; and (4) coercing other members to participate. 20 Ill. Adm. Code 504.Appendix A (2014). The charges likewise outlined the evidence against plaintiff, including that he was identified by confidential informants as participating in the protest, thus informing plaintiff of the evidence against him. See 20 Ill. Adm. Code 504.80(c) (2014) (the offender must be informed of the evidence against him).

¶ 23 Plaintiff does not contest he received proper notice of the disciplinary charges. Rather, he argues defendants failed to provide adequate notice that his conduct of refusing food, yard time, or communication with staff was prohibited. Due process requires inmates receive "fair notice" that their conduct is prohibited. *Cannon v. Quigley*, 351 Ill. App. 3d 1120, 1129, 815 N.E.2d 443, 450 (2004). The regulated community must be able to understand what conduct is prohibited. *People v. Selby*, 298 Ill. App. 3d 605, 613, 698 N.E.2d 1102, 1108 (1998). Rule 205 prohibits "[e]ngaging in security threat group or unauthorized organizational activities, meetings or criminal acts; displaying, wearing, possessing or using security threat group or unauthorized organizational insignia or materials; or giving security threat group or unauthorized organizational signs." 20 Ill. Adm. Code 504.Appendix A (2014).

¶ 24 Here, the disciplinary report alleged plaintiff, as the leader of the Black P Stones, a security threat group, engaged in the organization of an unauthorized protest and coerced other members to join the protest. These activities clearly fall within the prohibitions of Rule 205;

thus, the language of Rule 205 conveyed fair notice of the prohibited conduct. We therefore conclude the record affirmatively rebuts plaintiff's assertion that he lacked notice of the charges.

¶ 25 2. *Opportunity to Call Witnesses*

¶ 26 The right to call witnesses in a disciplinary proceeding is limited. *Baxter v. Palmigiano*, 425 U.S. 308, 321 (1976). "[T]he unrestricted right to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of the institution." *Wolff*, 418 U.S. at 566. Prison officials have the discretion to (1) keep the hearing within reasonable limits, (2) refuse to call witnesses that may subject the witnesses to retaliation or undermine prison authority, and (3) limit access to other inmates during the investigation. *Id.* "Any deviation from Department rules, such as a request for witnesses at the disciplinary hearing, would have been completely subject to the committee's discretion to accept." *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1118, 942 N.E.2d 758, 764 (2011). Department rules require the offender to request witnesses prior to the hearing, using the form attached to the disciplinary report. 20 Ill. Adm. Code 504.80(f)(2) (2014).

¶ 27 In this case, plaintiff's complaint does not allege or show that he requested witnesses in compliance with Department rules. In fact, the portion of the disciplinary report where plaintiff could request witnesses was left blank. Further, the adjustment committee's summary of the proceedings stated that plaintiff requested no witnesses, nor did he request additional time to procure witnesses (20 Ill. Adm. Code 504.80(d) (2014)) (allowing an inmate to obtain a continuance where good cause is shown). Thus, the record affirmatively rebuts plaintiff's contention that he requested witnesses or followed the proper Department procedures in calling witnesses.

¶ 28 Plaintiff further asserts his due-process rights were violated when the adjustment committee failed to provide a written reason for denying his witness request. 20 Ill. Adm. Code 504.80(i)(4) (2014) ("If any witness request is denied, a written reason shall be provided."). As we have already noted, the record reveals plaintiff requested no witnesses prior to or on the day of the hearing.

¶ 29 Plaintiff also contends defendants refused to consider the "affidavits" of inmates who denied participating in the protest or being coerced by plaintiff. See 20 Ill. Adm. Code 504.80(f)(1) (2014) (an offender may produce relevant documents in his defense). However, plaintiff's petition attached the adjustment committee's written decision, which makes no reference to those statements, raising an inference that plaintiff did not submit the statements for the adjustment committee's review. The record is also supported by other exhibits, namely, the 27 inmate statements attached to the petition. Of the 27 statements, we note that only 1 is notarized, and it was dated November 19, 2014—nearly a month after the hearing concluded. The other "affidavits" are simply statements signed by the inmates, with 19 of those dated after the hearing. In other words, plaintiff asserts the adjustment committee failed to consider statements that did not exist at the time of the hearing. A motion to dismiss does not admit allegations that conflict with facts disclosed in the exhibits; rather, the exhibits attached to the petition are controlling. *Busch v. Bates*, 323 Ill. App. 3d 823, 832, 753 N.E.2d 1184, 1191 (2001). We therefore find the record positively rebuts plaintiff's assertion that he tendered all of the witness statements to the adjustment committee.

¶ 30 Thus, we examine only the eight statements dated on or before the hearing. Those statements generally provide that plaintiff did not coerce those inmates into joining the protest. However, even if the adjustment committee considered those statements, plaintiff has not

demonstrated how those statements conflict with the statements of the confidential sources. Even taking the statements as true for purposes of the motion to dismiss, plaintiff has merely shown that *some* inmates were not coerced by plaintiff to participate in the protest. That does not support a finding that *no* inmates were coerced by plaintiff or that the confidential sources were lying.

¶ 31 Accordingly, we conclude plaintiff was not denied his ability to present witnesses or other evidence.

¶ 32 3. *Written Statement*

¶ 33 Plaintiff is entitled to a written statement by the disciplinary committee outlining the evidence relied upon in reaching its decision. "[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." (Internal quotation marks omitted.) *Cannon*, 351 Ill. App. 3d at 1132. Detailed findings are not required; however, the written decision must contain more than a conclusory statement. *Id*. The written findings of the disciplinary committee must be supported by "some evidence" in the record. *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 16, 966 N.E.2d 1233. Similarly, Department rules require the adjustment committee to provide a written decision that includes (1) a summary of the evidence, including information from confidential sources if that source is deemed reliable and institutional safety will not be compromised if the source is revealed; (2) reasoning to support the adjustment committee's findings and rulings on the evidence; and (3) the recommended disciplinary action and reasoning behind the action. 20 Ill. Adm. Code 504.80(m) (2014).

¶ 34 Here, the adjustment committee summarized the evidence, which included (1) plaintiff's written statement denying the charges; (2) the disciplinary report; and (3) statements by two confidential informants who independently identified plaintiff as the leader of the Black P Stones security threat group who participated in, helped to organize, and coerced other members into joining a protest by refusing food, yard time, and communication with prison staff. In accepting the statements of the confidential informants, the adjustment committee spoke with the Internal Affairs Unit, which corroborated the truthfulness and accuracy of the confidential informants based on their history of reliability. Moreover, the adjustment committee found the safety and security of the institution required those witnesses to remain confidential. At least one of those confidential informants positively identified plaintiff as the offender. Based on those findings, the adjustment committee relied on at least "some evidence" to support its finding that plaintiff violated Rule 205. See *Knox*, 2012 IL App (4th) 110325, ¶ 16. The adjustment committee also stated its recommendation for sanctions was based on the nature of the rule. Thus, the adjustment committee met the due-process requirement of providing a written statement outlining its decision.

¶ 35 Nevertheless, plaintiff argues the adjustment committee failed to state why it believed the confidential sources over his statements and the witnesses' statements and, therefore, failed to explain why it discounted exonerating evidence in violation of Department rules. 20 Ill. Adm. Code 504.80(e), (g), (h) (2014)). As noted above, there is not necessarily any inconsistency between the confidential informants and the inmates who signed statements indicating plaintiff did not coerce them into participating in a protest. Thus, the adjustment committee was not required to explain its reasoning for accepting the statements of confidential sources over plaintiff's witnesses. Nor was plaintiff's self-serving statement "exonerating

evidence." The record affirmatively demonstrates the adjustment committee based its information on relevant evidence and that it was satisfied "some evidence" supported its finding that plaintiff committed the charged offense. See 20 Ill. Adm. Code 504.80(k) (2014) (the adjustment committee must base its decision on all relevant information and evidence).

¶ 36 We therefore conclude the record establishes that plaintiff received due process during his disciplinary proceedings. Accordingly, the circuit court properly dismissed plaintiff's claims seeking *certiorari* relief with respect to the disciplinary proceedings.

¶ 37 B. Constitutionality of Rule 205

¶ 38 Plaintiff next asserts the circuit court erred by finding he failed to state a cause of action in support of his argument that Rule 205 violates his right to equal protection. U.S. Const., amend. XIV. Specifically, plaintiff asserts Rule 205 improperly prohibits conduct based on an inmate's status as a member of a security threat group. Because he asserts Rule 205 is unconstitutional, plaintiff seeks to prohibit defendants from charging inmates with a violation of Rule 205.

¶ 39 "*Mandamus* relief is an extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public official where the official is not exercising discretion." (Internal quotation marks omitted.) *Dye v. Pierce*, 369 Ill. App. 3d 683, 686, 868 N.E.2d 293, 296 (2006). A plaintiff is entitled to *mandamus* relief only where he demonstrates (1) a clear, affirmative right to relief; (2) a clear duty of the official to act; and (3) clear authority in the official to comply with the writ.

¶ 40 When the trial court dismisses a plaintiff's case for failure to state a cause of action, we look to "whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn

from those facts as true, are sufficient to state a cause of action upon which relief may be granted." *Reynolds*, 2013 IL App (4th) 120139, ¶ 25. Our review is *de novo*. *Id.*

¶ 41 The equal-protection clause does not forbid the government from creating different classifications; rather, it keeps the government "from treating differently persons *who are in all relevant respects alike*." (Internal quotation marks omitted and emphasis in original.) *In re Derrico G.*, 2014 IL 114463, ¶ 92, 15 N.E.3d 457. A plaintiff cannot support an equal-protection claim where unlike groups are treated differently. *Id*. Thus, "[a] threshold matter in addressing an equal protection claim is determining whether the individual claiming an equal protection violation is similarly situated to the comparison group." *In re M.A.*, 2015 IL 118049, ¶ 25, 43 N.E.3d 86. Where a party's equal-protection claim fails to show he is similarly situated to the comparison group, his equal-protection challenge fails. *Id.* ¶ 26.

¶ 42 Here, plaintiff has failed to allege that members of security threat groups and those who are not part of security threat groups are in all relevant aspects alike. Without such a showing, plaintiff cannot state a claim for an equal-protection violation. *Id*. Plaintiff has therefore failed to demonstrate a clear, affirmative right to relief.

¶ 43 Moreover, "[a] prison regulation, even one that impinges on an inmate's constitutional right, is valid if it is reasonably related to a legitimate penological interest." *People v. Fort*, 352 Ill. App. 3d 309, 314, 815 N.E.2d 1246, 1250 (2004). Legitimate penological interests include the enforcement of prison security, order, and discipline. *Id.* "Prison security, imperiled by the brutal reality of prison gangs, provides the backdrop of the State's interest." *Wilkinson v. Austin*, 545 U.S. 209, 211-12 (2005). Because prison gangs are a threat to prison security, the State has a legitimate penological interest in punishing gang activity more severely than activities not tied to gang activity.

¶ 44 Because plaintiff does not have a clear right to the relief sought, the circuit court did not err in dismissing plaintiff's complaint as to this issue.

¶ 45 III. CONCLUSION

¶ 46 Based on the foregoing, we affirm the circuit court's judgment.

¶ 47 Affirmed.