

**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).

2014 IL App (4th) 130714-U

NO. 4-13-0714

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

June 16, 2014

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

GERALD JONES,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Livingston County
SALVADORE GODINEZ, GUY PIERCE, RANDY	)	No. 12MR85
PFISTER, and ADJUSTMENT COMMITTEE,	)	
Defendants-Appellees.	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court. Justices Pope and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not err in dismissing plaintiff's complaint for *certiorari* review of prison disciplinary proceedings where his complaint was premature in that plaintiff had not conclusively demonstrated he had exhausted his administrative remedies, or, in the alternative, his petition was barred by the doctrine of *laches* as it was filed more than six months after the cause of action accrued.

¶ 2 Plaintiff, Gerald Jones, an inmate at Pontiac Correctional Center, appeals the circuit court's dismissal of his complaint seeking *certiorari* review of prison disciplinary proceedings, arguing defendants, Salvadore Godinez, Guy Pierce, Randy Pfister, and the Adjustment Committee, employees or agents of the Illinois Department of Corrections (DOC), denied him due process by issuing disciplinary measures without first considering all relevant evidence related to the underlying incident. We affirm.

¶ 3

## I. BACKGROUND

¶ 4 On April 23, 2011, plaintiff received a disciplinary ticket, alleging he had committed two violations: (1) he had disobeyed a direct order and (2) he had damaged or misused state property. At the May 2, 2011, adjustment committee meeting, plaintiff pleaded not guilty and tendered a handwritten statement of his version of the incident. On May 20, 2011, the adjustment committee found plaintiff guilty of disobeying a direct order, but not guilty of damage or misuse of property. The adjustment committee imposed penalties against him. On June 1, 2011, plaintiff filed a grievance, alleging a violation of his constitutional rights, but his grievance was denied. He claimed he appealed to the Director of DOC and the Administrative Review Board in "the month of June 2011," but he received no response.

¶ 5 On August 1, 2012, plaintiff filed a *pro se* complaint in the circuit court of Livingston County, alleging defendants violated his due-process rights when, *inter alia*, the adjustment committee determined his guilt without reviewing all supporting evidence, relying exclusively on the disciplinary report, and refusing to question witnesses as requested by plaintiff. Plaintiff claimed he had exhausted all available administrative remedies.

¶ 6 Defendant Godinez, the only defendant served with a summons, filed a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)), asserting plaintiff's complaint was barred by the doctrine of *laches* when it was not filed until August 2012, over a year from when he allegedly filed his appeals and received no response. Plaintiff responded to defendant's untimeliness allegation by asserting he had, in fact, mailed his petition on March 23, 2012, which he claimed was sufficient since he had until June 2012 (12 months after filing his June 2011 "appeal") to seek relief in the circuit court.

¶ 7 On May 21, 2013, the circuit court granted defendant's motion to dismiss based on plaintiff's failure to exhaust his administrative remedies and, in the alternative, on the doctrine of *laches*. The court found as follows:

"A review of the exhibits attached to plaintiff's complaint indicate he has not timely filed this petition within six months as required by statute. Although plaintiff contends that he appealed the [Administrative Review Board's] final decision, the documents attached as [exhibit] E do not support that position. Thus, the relevant date from which he should have brought this complaint is June 8, 2011. Even assuming arguendo that he did appeal to the Director, and six months passed without a response, this complaint is still not timely filed as it should then have been filed in June 2012."

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Plaintiff appeals, claiming the circuit court erred in dismissing his petition for writ of *certiorari*, finding he had failed to (1) exhaust his administrative remedies or (2) timely file the petition. "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 3-113 (West 2010))] and provides no other form of review." *Hanrahan v. Williams*, 174 Ill. 2d 268, 272 (1996). The standard of review in such an action is "essentially the same as those under the Administrative Review Law." *Hanrahan*, 174 Ill. 2d at 272. The reviewing court will not disturb the agency's decision unless it

is arbitrary and capricious or against the manifest weight of the evidence. *Hanrahan*, 174 Ill. 2d at 272-73. 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 v. Snyder*, 321 Ill. App. 3d 248, 253 (2001).

¶ 11 Before a plaintiff may seek *certiorari* review in the circuit court, he must exhaust all administrative remedies. *Reyes v. Walker*, 358 Ill. App. 3d 1122, 1125-26 (2005). Although plaintiff claims he appealed his decision through all of the administrative levels, the record does not support his claim. See *Montes v. Taylor*, 2013 IL App (4th) 120082, ¶ 12 ("Where an inmate fails to show his grievance had administrative finality, he does not meet his burden of showing exhaustion of administrative remedies."). Plaintiff indicates he submitted an appeal to the Director and the Administrative Review Board, however the documents he claims demonstrates his submission (the signed grievance response form indicating his intention to appeal to the Director and an "Offender Authorization for Payment" form requesting payment to the Administrative Review Board) do not, in fact, prove plaintiff's claimed appeals were ever actually submitted. As such, plaintiff has failed to meet his burden showing he had conclusively exhausted his administrative remedies. *Montes*, 2013 IL App (4th) 120082, ¶ 13. Without substantive proof, we will not disturb the circuit court's dismissal on this basis.

¶ 12 The circuit court also determined, in the alternative, that plaintiff's petition was untimely based on the doctrine of *laches*. The court held that "[e]ven assuming arguendo that [plaintiff] did appeal to the Director, and six months passed without a response," his petition was still not timely. He should have received a response from the Director by December 2011 (six months after filing his appeal to (20 Ill. Adm. Code 504.850(f) (2003))). He then would have had

six months from December 2011 to file his *certiorari* petition, or until June 2012, making his August 2012 petition untimely. See *City of Chicago v. Condell*, 224 Ill. 595, 598-99 (1906) (our supreme court determined that the doctrine of *laches* applies to petitions for a writ of *certiorari*); *Clark v. City of Chicago*, 233 Ill. 113, 115 (1908) (*established six months as the period of time within which a party must bring the petition*). See also *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739 (2003).

¶ 13 A defendant asserting *laches* must prove: (1) a lack of due diligence on the plaintiff's part; and (2) prejudice. *Ashley*, 339 Ill. App. 3d at 739. However, it is possible for the plaintiff to overcome the defense if he can provide a reasonable excuse for the delay. *Ashley*, 339 Ill. App. 3d at 739. According to our decision in *Ashley*, prejudice may be presumed when the matter raised in the petition involves the review of prison disciplinary proceedings. *Ashley*, 339 Ill. App. 3d at 739. We note plaintiff failed to plead a reasonable excuse for the delay in filing the petition in the circuit court. In this appeal, plaintiff contends the circuit clerk's office "changed, altered, and deleted the original filed records" to indicate the filing date in August 2012, "not the real application in 2012." He insists the clerk held the petition beyond the due date. Accordingly, he alleges, he "showed a reasonable explanation why the complaint and application to proceed as a poor person was delay [*sic*] if any was due to the clerk and court actions."

¶ 14 Plaintiff insists his petition was sent to the circuit clerk's office in April 2012, but was not file stamped until August 2012. In his response to defendant's motion to dismiss, plaintiff attached copies of two letters, one from the circuit clerk and one from the circuit court, both dated in April 2012, informing him that his documents submitted for filing were incomplete and were unable to be filed. However, neither letter identifies the nature of the documents or the

parties involved. We cannot accept plaintiff's representation that the documents sent to the clerk for filing included this petition for *certiorari* without some positive identification given plaintiff failed to plead a reasonable excuse for his delay in the petition itself. We further cannot accept plaintiff's representation that the circuit clerk unreasonably held the petition for four months before filing. Neither representation is feasible to demonstrate that plaintiff had a reasonable excuse for his late filing. Based upon our review of the record, we conclude plaintiff's petition was barred by the doctrine of *laches* because it was not filed within six months of the accrual of a cause of action and plaintiff failed to demonstrate a reasonable excuse for the delay.

¶ 15

### III. CONCLUSION

¶ 16 For the foregoing reasons, we affirm the circuit court's judgment dismissing plaintiff's petition for a writ of *certiorari*.

¶ 17 Affirmed.