

NOTICE

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2014 IL App (4th) 130893-U

NO. 4-13-0893

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 12, 2014

Carla Bender

4th District Appellate Court, IL

DEMETRIUS G. HILL,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
SALVADOR A. GODINEZ, GINA ALLEN,)	No. 12MR879
JOSEPH YURKOVICH, BRADLY LIVINGSTON,)	
CLIFFORD SANGSTER, LIEUTENANT STEELE,)	
and DANIEL HAHN,)	Honorable
Defendants-Appellees.)	John Schmidt,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court. Presiding Justice Appleton and Justice Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the circuit court correctly granted defendants' motion to dismiss because inmate plaintiff was not entitled to *mandamus* relief where the challenged decision was discretionary.
- ¶ 2 In August 2012, plaintiff, Demetrius G. Hill, filed in the circuit court a petition for *mandamus* against defendants, Salvador A. Godinez, Gina Allen, Joseph Yurkovich, Bradly Livingston, Clifford Sangster, Lieutenant Steele, and Daniel Hahn, all of whom held positions within the Department of Corrections (DOC). The petition asserted defendants refused to perform their ministerial duties, in violation of plaintiff's due-process rights, by failing to review exculpatory video surveillance. In April 2013, defendants filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-615 (West 2012)), which the court granted in September 2013.

¶ 3 Plaintiff appeals, asserting the circuit court erred in dismissing his petition for *mandamus* relief, in which he requested the court compel defendants to (1) restore six months of his good-conduct credit, (2) expunge his disciplinary record as to this matter, and (3) pay \$80,000 each in compensatory and punitive damages. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In November 2011, correctional officer Daniel Hahn conducted an investigation into the cause of an injury to Inmate Clift that required him to be treated at an outside hospital. Clift sustained "an injury to the left side of his upper lip" that required sutures to close. According to Clift, he sustained the injury from falling in the shower. As part of the investigation, Hahn spoke with three confidential sources. The first source stated plaintiff approached Clift's shower stall and punched Clift in the face, then later entered Clift's cell and offered to pay him to not tell. The second source observed plaintiff and Clift arguing in the shower, after which plaintiff punched Clift in the face. The second source also observed plaintiff enter Clift's cell for a short time prior to Clift seeking treatment. The third source stated plaintiff approached Clift in the shower, angry about Clift disrespecting him in some way. Plaintiff then punched Clift in the mouth, which caused Clift's mouth to start bleeding. The third source indicated plaintiff entered Clift's cell and offered to pay Clift to not tell on him. Hahn's report stated the sources were reliable because (1) their statements closely corroborated one another, (2) they were interviewed at separate times, and (3) they had no knowledge of the other sources or the other sources' statements. Moreover, Hahn noted the sources had "provided truthful and accurate information in the past." According to the disciplinary report, Hahn withheld the identities of the confidential sources for their safety and the security of the prison.

¶ 6 As part of the investigation, Hahn and Lieutenant Steele interviewed plaintiff. During the course of the interview, plaintiff stated, (1) "You all better be sure you know what you are doing f***ing with me!"; (2) "I got people I can call and you will regret this!"; (3) "You are all on some f***ed up s*** down here and you better be sure to get me the f*** out of here when you're done! Send me back to Pontiac!"; and (4) "Don't worry I will be getting in touch with my lawyer and you will regret messing with me!" Hahn reviewed the video-surveillance footage, which he said confirmed plaintiff was "in the area at the time of the incident." Hahn then filed his disciplinary report against plaintiff for (1) assaulting Clift and (2) intimidating or threatening prison officials. At the bottom of the disciplinary report, plaintiff requested the prison's adjustment committee (Committee) obtain the video surveillance of the shower room.

¶ 7 Later that month, the Committee conducted a hearing and made the following findings. Internal affairs confirmed Clift had to be transported to an outside hospital for treatment of a split lip that required sutures. According to internal affairs, Clift's injury was consistent with being struck with a closed fist and was inconsistent with slipping and falling in the shower. The Committee considered interviews from confidential sources whose identities were withheld for their safety, all of whom independently verified Clift sustained his injury as a result of plaintiff punching him with a closed fist. Further, the Committee considered Hahn's and Steele's statements regarding plaintiff's alleged threats.

¶ 8 In his defense, plaintiff asserted the entire disciplinary report had been fabricated. He said he approached Clift to ask for a bar of soap for the shower but denied assaulting him or seeing him fall in the shower. The Committee noted plaintiff had submitted a written report requesting the Committee to consider the video-surveillance footage. Plaintiff provided no evidence with regard to the charge that he threatened or attempted to intimidate the officers.

¶ 9 On that evidence, the Committee found plaintiff guilty of the charges and ordered a sanction consisting of (1) six months in C-grade, (2) six months of segregation, (3) revocation of six months' good-conduct credit, (4) a disciplinary transfer, and (5) restitution for Clift's injuries.

¶ 10 In December 2011, plaintiff filed a grievance challenging the Committee's findings, asserting he had been denied due process when the Committee failed to provide him with the names of the witnesses against him or video surveillance of the incident. Again, plaintiff made no argument with regard to the Committee's finding that he threatened or attempted to intimidate the officers. In June 2012, the administrative review board denied plaintiff's grievance.

¶ 11 In August 2012, plaintiff filed in the circuit court a petition for *mandamus* relief, asserting defendants refused to perform their ministerial duties by ensuring plaintiff, as an inmate, was afforded his right to due process and to review relevant, exculpatory evidence (*i.e.*, video-surveillance footage of his alleged misbehavior). Plaintiff argued that, due to those deprivations, the Committee determined he committed the alleged offenses, thus requiring him to (1) pay restitution, (2) lose six months of good-conduct credit, and (3) be placed in C-grade status and segregation. Plaintiff then requested the court to (1) order defendants, in both their official and individual capacities, to pay compensatory and punitive damages in the amount of \$80,000 each; (2) restore his six months of good-conduct credit; and (3) expunge the Committee's finding of guilt.

¶ 12 In April 2013, defendants filed a motion to dismiss pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)), asserting (1) plaintiff failed to demonstrate a

violation of his due-process rights, and (2) the petition sought improper relief through *mandamus*. In September 2013, the circuit court granted defendants' motion to dismiss.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, plaintiff asserts the circuit court erred in dismissing, pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)), his petition for *mandamus* relief, in which he requested the court compel defendants to (1) restore six months of his good-conduct credit, (2) expunge his disciplinary record as to this matter, and (3) pay \$80,000 each in compensatory and punitive damages. We begin by noting that plaintiff challenges the Committee's findings only as to the assault charge; therefore, this order does not pertain to the Committee's determination that plaintiff threatened or intimidated a correctional officer.

¶ 16 A. Standard of Review

¶ 17 A motion to dismiss pursuant to section 2-615 of the Civil Code challenges the legal sufficiency of the complaint. *Pickel v. Springfield Stallions, Inc.*, 398 Ill. App. 3d 1063, 1066, 926 N.E.2d 877, 881 (2010). The central issue in ruling on a section 2-615 motion to dismiss 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." *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004). The circuit court should not grant a 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). A dismissal pursuant to section 2-615 is subject to *de novo* review. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18.

¶ 18

B. When *Mandamus* Relief Is Appropriate

¶ 19

"*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." *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739, 759 N.E.2d 585, 588 (2001). A petition for *mandamus* relief is properly supported by facts alleging a violation of due process. *Dye v. Pierce*, 369 Ill. App. 3d 683, 687, 868 N.E.2d 293, 296 (2006). To successfully claim a due-process violation, a plaintiff must show a deprivation of life, liberty, or a property interest. See *Webb v. Lane*, 222 Ill. App. 3d 322, 326-27, 583 N.E.2d 677, 681 (1991). Because a portion of the Committee's sanctions included the revocation of good-conduct credit, plaintiff has demonstrated a liberty interest subject to due process. See *Lucas v. Taylor*, 349 Ill. App. 3d 995, 1000, 812 N.E.2d 72, 76 (2004) (a loss of good-conduct credit creates a liberty interest subject to due process).

¶ 20

C. Whether Plaintiff Stated a Claim for *Mandamus* Relief

¶ 21

Having determined plaintiff has a liberty interest sufficient to implicate his right to due process, we next turn to whether plaintiff has demonstrated a due-process violation that entitles him to *mandamus* relief. To establish a claim for *mandamus* relief, a prisoner must show " '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)).

¶ 22

Plaintiff asserts the Committee was required to consider the video surveillance of the shower area, but it failed to do so, despite plaintiff's assertion that the video would prove exculpatory. First, we note we have considered the various exhibits plaintiff attached to his

petition for *mandamus*. See *Bajwa v. Metropolitan Life Insurance Co.*, 208 Ill. 2d 414, 431, 804 N.E. 2d 519, 531 (2004) (any document attached to the pleading will be treated as part of the pleading). A review of plaintiff's exhibit D, the disciplinary report provided to the Committee, reveals a reference to the video footage. Plaintiff's exhibit B, the final summary report, is silent as to whether or not the Committee considered the video footage, but that is not dispositive. See *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1134, 815 N.E.2d 443, 454 (2004) (the mere fact that the Committee did not specifically mention all of the evidence in its written finding does not mean the Committee failed to consider that information). Plaintiff has failed to state a claim that the video footage was excluded. Finally, even in the event the video footage should have been, but was not, considered, plaintiff's petition for *mandamus* is not viable.

¶ 23 Pursuant to DOC regulations, the Committee is to consider material that is relevant to the issue of whether or not the inmate committed the offense. 20 Ill. Adm. Code 504.80(g) (2003). However, the Committee may decline to consider evidence that is irrelevant, cumulative, would jeopardize safety, or would disrupt the security of the facility. 20 Ill. Adm. Code 504.80(h)(4) (2003). In a nutshell, the Committee had the discretion to determine what evidence (witnesses or otherwise) to consider. Given the Committee's decision regarding what evidence to consider is wholly discretionary, such a decision may not be challenged through a *mandamus* petition. *Dye*, 369 Ill. App. 3d at 687, 868 N.E.2d at 296. Therefore, we conclude the circuit court did not err in dismissing plaintiff's petition seeking *mandamus* relief.

¶ 24 III. CONCLUSION

¶ 25 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 26 Affirmed.