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IN THE APPELLATE COURT

FOURTH DISTRICT

SHAWN EDWARD HUGHES,) Appeal from
Plaintiff-Appellant,) Circuit Court of
v.) Livingston County
MICHAEL P. RANDLE, Director, THE) No. 10MR18
DEPARTMENT OF CORRECTIONS; LEE)
RYKER, Warden, LAWRENCE CORRECTIONAL)
CENTER; and ELDON COOPER and DWAYNE) Honorable
VOLKMAN, LAWRENCE CORRECTIONAL CENTER,) Jennifer H. Bauknecht,
Defendants-Appellees.) Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

¶ 1 *Held:* Trial court properly dismissed plaintiff's complaint for *certiorari* review of prison disciplinary proceedings complaining he was denied due process as the complaint he filed and its attachments show he received due process.

¶ 2 Plaintiff, an inmate at Pontiac Correctional Center, appeals from the trial court's dismissal of his complaint seeking *certiorari* review of prison discipline proceedings claiming defendants, employees of the Illinois Department of Corrections, denied him due process when they revoked his good-time credit. We affirm.

I. BACKGROUND

¶ 4 Plaintiff, Shawn Hughes, was an inmate at Lawrence Correctional Center (Lawrence), operated by the Illinois Department of Corrections (DOC) when the incidents complained of occurred. At that time, prison request slips were being sent to female DOC

employees with threatening and sexually explicit messages. The request slips were "signed" by several different inmates. This had been ongoing for several months and many inmates were placed on investigative status, moved and reviewed by the Intelligence Unit and by Internal Affairs. On August 18, 2009, as part of this investigation, Correctional Officer Jeremiah Brown came to plaintiff's prison cell and told him to get dressed for an interview with Internal Affairs. As plaintiff was pulling his pants on, he reached into his pants pocket, pulled out two wrinkled pieces of paper and threw them into the toilet. Officer Brown entered the cell and retrieved the papers before plaintiff could flush them down the toilet. The request slips recovered from the toilet were identified as being in plaintiff's handwriting and addressed to two female DOC employees but were purportedly signed by inmates other than plaintiff. Both slips contained sexually explicit and/or threatening messages. Plaintiff was interviewed in the Internal Affairs Office and apparently admitted to sending the various request slips but stated he did not mean anything by them and was "just playing."

¶ 5 On August 20, 2009, a disciplinary report was issued to plaintiff. It indicates he refused to sign it. On August 24, 2009, an Adjustment Committee hearing was held at Lawrence. The Committee determined plaintiff admitted writing the offensive request slips retrieved from the toilet and the Committee also found the handwriting on those slips matched the prior sexually-explicit request slips submitted through the institution's mail. Plaintiff was found guilty of sexual misconduct, impeding or interfering with an investigation, intimidation or threats and giving false information to an employee. Recommended discipline was one-year's demotion to C-Grade, one-year's segregation, revocation of one year's good-conduct credits, and a disciplinary transfer to another correctional facility. The warden concurred in the findings of the Committee

as did the Director of DOC.

¶ 6 On September 23, 2009, then residing at Pontiac Correctional Center, plaintiff filed a grievance regarding the disciplinary reports he received in August at Lawrence alleging, staff misconduct and excessive use of force. After an investigation by Administrative Review Board (Board) staff, on January 4, 2010, the Board denied plaintiff's grievance and confirmed the discipline.

¶ 7 On February 23, 2010, plaintiff filed a "Petition for a Common Law Writ of *Certiorari*" against defendants Michael Randle, Director of DOC; Lee Ryker, warden at Lawrence; Eldon Cooper, correctional officer at Lawrence; and Dwayne Volkman, presumably another correctional officer at Lawrence. His complaint stated he had been unfairly disciplined for sending threatening prison mail and argued he was entitled to certiorari relief based on the prison adjustment committee's failure to comply with his constitutional due-process rights under *Wolff v. McDonnell*, 418 U.S. 539, 564-65, 41 L. Ed. 2d 935, 955-56, 94 S.Ct. 2963, 2978-79 (1974). Specifically, plaintiff alleged (1) there was not "some evidence" of guilt presented to the Adjustment Committee; (2) the record was "unclear" about admissions he made to the Adjustment Committee regarding slips of paper a correctional officer retrieved from the toilet in his cell; (3) no statements were taken from other correctional officers besides the one who wrote him the disciplinary ticket; (4) the processing of his grievance failed to comply with the requirement of *Wolff*; (5) the evidence presented at the Adjustment Committee hearing was merely "conclusory"; (6) he was threatened by Officer Brown and other correctional officers; (7) he did not know he was under investigation and had no notice of the charges against him; and (8) the procedures used to address his disciplinary situation violated prison regulations.

¶ 8 On June 15, 2010, defendants filed a motion to dismiss plaintiff's complaint, arguing he was not denied due process and had not exhausted his administrative remedies. On July 13, 2010, plaintiff filed a response to the motion to dismiss. He argued (for the first time), he did not receive timely 24-hour notice of the charges filed against him. Plaintiff also contended the Adjustment Committee did not fairly consider his evidence or set out its reasoning in disciplining him. Included with his response was an exhibit containing the January 4, 2010, letter from the Board denying his grievance.

¶ 9 On September 29, 2010, the trial court dismissed plaintiff's complaint. Although the court noted it appeared plaintiff had exhausted his administrative remedies based on the Board's letter, the court found a thorough review of the record indicated plaintiff received all of his due process as required under *Wolff*. This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, plaintiff argues (1) he was not given 24-hour notice of his adjustment hearing; (2) the complaining officer's written factual statement in the discipline report was not sufficient evidence on which the Adjustment Committee could find him guilty; and (3) he was entitled to have the Adjustment Committee produce the prisoner request slips that were the basis of the charges against him.

¶ 12 The trial court dismissed plaintiff's complaint on the pleadings. Although defendants' motion to dismiss was brought pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2010)), the court's decision was based on a review of the complaint and the documents plaintiff tendered to support it; therefore, the judgment should be affirmed because it was correct under section 2-615 of the Code (735 ILCS

5/2-615 (West 2010)). See *Caruth v. Quinley*, 333 Ill. App. 3d 94, 97, 775 N.E.2d 224, 226 (2002) (dismissal pursuant to section 2-619 may be affirmed on appeal under section 2-615). Review of a dismissal on the pleadings is *de novo*. *Washington v. Walker*, 391 Ill. App. 3d 459, 463, 908 N.E.2d 1066, 1070 (2009).

¶ 13 Inmates subject to disciplinary action potentially resulting in loss of good-time credit are entitled to (1) notice of the disciplinary charges at least 24 hours prior to the hearing; (2) an 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 on and the reasons for the disciplinary actions. *Wolff*, 418 U.S. at 564-66, 41 L.Ed.2d at 956, 94 S. Ct. at 2979. Disciplinary findings must also be supported by some evidence in the record to comport with due process. *Superintendent, Massachusetts Correction Institution at Walpole v. Hill*, 472 U.S. 445, 454, 86 L. Ed. 2d 356, 364, 105 S. Ct. 2768, 2773 (1985).

¶ 14 First, plaintiff argues the trial court was negligent in the handling of his complaint because page two of his disciplinary report was lost. He does not argue he was not given a complete copy of the report or of the Adjustment Committee's summary of its decision, which is also missing from the record. The record includes a copy of the Board's subsequent report detailing DOC's view of what happened at Lawrence and why plaintiff was disciplined. The Board report provided a basis to establish plaintiff received a sufficient written statement of the evidence relied on by DOC and its reasons for disciplining him. Plaintiff's own filings refute the contention he did not receive an adequate written explanation of why he was disciplined.

¶ 15 While plaintiff argues he did not receive 24-hour notice of the Adjustment

Committee hearing, his own complaint suggests otherwise. The first page of the disciplinary report plaintiff attached to plaintiff's complaint states the report was issued to him on August 20, 2009. The complaint and the Board's report indicate the hearing was conducted on August 24, 2009, more than 24 hours after notice was given.

¶ 16 Plaintiff also argues he was entitled to inspect the request slips DOC contends were sent by him through the prison's mail system and the Adjustment Committee wrongly found him guilty on just the statements of Officer Brown. Plaintiff ignores the fact the Board included in its report the fact its staff contacted several Lawrence staff members plaintiff accused of excessive force against him. Supervisor Marc Hodge confirmed plaintiff admitted writing the slips. Assistant Warden Campanella, one of the female staff to whom the request slips were written, confirmed Hodge's account of what happened. Officer Brown described plaintiff's allegations of abuse that plaintiff alleged accounted for his confession and reported the allegations were "fabrications." Social worker Harris stated, contrary to plaintiff's assertions, she did not recall him making any allegations he had been assaulted by staff when he confessed to sending the request slips. Thus, the record shows there was more than "some evidence" beyond plaintiff's admissions sufficient to uphold the discipline.

¶ 17 While the allegations of plaintiff's complaint must be taken as true for purposes of considering the viability of his claims, neither the Adjustment Committee nor the Board were required to make the same assumptions about his credibility. The fact he was caught by Officer Brown attempting to dispose of request slips similar to those circulating in the prison undercut his defense even if, as he now claims, he did not confess or did so under duress. The materials plaintiff tendered with his complaint do not indicate a violation of due process but indicate DOC

properly gave him the complained-of discipline based on a violation of the rules. Plaintiff's rules violation was supported by eyewitness testimony, physical evidence, and plaintiff's own admission.

¶ 18 The pleadings filed in this case indicate plaintiff received the due process required under *Wolff*. The trial court's dismissal of plaintiff's complaint was correct.

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, we affirm the trial court's judgment.

¶ 21 Affirmed.