

NOTICE
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2012 IL App (4th) 110095-U

Filed 1/13/12

NO. 4-11-0095

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

GERALD JONES,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
MICHAEL RANDLE, GUY PIERCE, and THE)	No. 10MR65
ADJUSTMENT COMMITTEE,)	
Defendants-Appellees.)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* Because plaintiff's petition for common law writ of *certiorari* is not barred by *laches* and alleges facts sufficient to support a claim for relief, we reverse the trial court's dismissal of plaintiff's petition and remand for further proceedings.

¶ 2 In June 2010, plaintiff, Gerald Jones, an inmate at Pontiac Correctional Center, filed a petition for a writ of *certiorari* in the trial court, alleging defendants, prison officers and employees, deprived Jones of due process in connection with prison disciplinary proceedings against him. In November 2010, the court dismissed Jones's petition with prejudice, finding (1) the petition was barred by *laches* and (2) the petition failed to state a claim for relief. Jones appeals, arguing dismissal was improper. We agree with Jones and reverse.

¶ 3 I. BACKGROUND

¶ 4 According to Illinois Department of Corrections (DOC) online prison inmate search results, Jones is currently imprisoned in Pontiac serving a life sentence for murder. He is

ineligible for release.

¶ 5 On July 14, 2009, a Pontiac corrections officer completed a disciplinary report alleging that Jones had struck the officer with urine and feces in violation of DOC offense No. 102 (20 Ill. Adm. Code 504.app. A (2011)), assaulting any person. According to the disciplinary report, Jones was served with the disciplinary report on July 17, 2009, but refused to acknowledge service.

¶ 6 On August 6, 2009, following a disciplinary hearing, the Adjustment Committee, a committee in charge of conducting disciplinary hearings on allegations of major offenses (see 20 Ill. Adm. Code 504.50(d)(3) (2011)), found that Jones had committed the disciplinary offense as reported and imposed the following penalties against him: (1) one year of "C-Grade," (2) one year of segregation, (3) revocation of one year of good conduct credits, (4) three months of yard restriction, and (5) six months of contact visits restriction.

¶ 7 Following the Adjustment Committee's findings, Jones pursued administrative relief through DOC grievance proceedings. On September 25, 2009, a grievance officer and defendant Guy Pierce, chief administrative officer, denied one of Jones's grievances; on November 17, 2009, another grievance officer and Pierce denied another of Jones's grievances. Jones timely appealed these denials to DOC's Administrative Review Board, exhausting Jones's administrative remedies. On January 19, 2010, the Administrative Review Board denied Jones's grievance.

¶ 8 On June 25, 2010, Jones filed a complaint for common law writ of *certiorari* in the trial court. Jones alleged he was denied due process in that (1) he had not been served with the disciplinary report (a) within eight days of the incident as required by section 504.30(f) of

title 20 of the Illinois Administrative Code (20 Ill. Adm. Code 504.30(f) (2011)) or (b) at least 24 hours before his disciplinary hearing as required by *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974); and (2) the Adjustment Committee's finding was not supported by "some evidence of the charges and conduct alleged to have been committed" (see 20 Ill. Adm. Code 504.80(j)(1)) (2011).

¶ 9 In August 2010, defendants filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)), arguing (1) Jones's petition was barred by *laches* and (2) alternatively, it failed to state a claim for relief. In December 2010, the trial court granted defendants' motion to dismiss for both reasons stated in the motion. In February 2010, the court denied Jones's motion for reconsideration.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, Jones argues the trial court erred by dismissing his petition for writ of *certiorari* as (1) it was not barred by *laches* and (2) it stated a claim upon which relief could be granted. We agree with Jones.

¶ 13 A. Section 2-615, *Certiorari*, and Relevant Standards of Review

¶ 14 Dismissal of an action pursuant to section 2-615 is inappropriate where "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). In ruling on a section 2-615 motion to dismiss, "a court must accept as true all well-pleaded facts in the complaint and all reasonable inferences therefrom." *Id.* The court must consider "[a]ll facts apparent from the face of the pleadings,

including the exhibits attached thereto." *Green v. Rogers*, 234 Ill. 2d 478, 491, 917 N.E.2d 450, 459 (2009). "Exhibits attached to the complaint are considered part of the complaint, and when inconsistencies between the factual allegations and the exhibit arise, the exhibit controls over the factual allegation in the pleading." *Armstrong v. Snyder*, 336 Ill. App. 3d 567, 569, 783 N.E.2d 1101, 1103 (2003).

¶ 15 "A common law writ of *certiorari* is a general method for obtaining trial 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 through 3-113 (West 2008))] and provides for no other form of review." *Hanrahan v. Williams*, 174 Ill. 2d 268, 272, 673 N.E.2d 251, 253 (1996). The standards of review in such an action "are essentially the same as those under the Administrative Review Law." *Id.* at 272, 673 N.E.2d at 253-54. Particularly, "courts generally do not interfere with an agency's discretionary authority unless the exercise of that discretion is arbitrary and capricious [citation] or the agency action is against the manifest weight of the evidence [citation]." *Id.* at 272-73, 673 N.E.2d at 254. As the statutes regarding prison disciplinary procedures (see 730 ILCS 5/3-8-7 through 3-8-10 (West 2008)) neither adopt the Administrative Review Law nor provide another method of judicial review of disciplinary procedures, *certiorari* review of prison discipline in the trial court is generally appropriate. *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253, 748 N.E.2d 285, 290 (2001).

¶ 16 B. *Laches*

¶ 17 Jones first argues his petition for writ of *certiorari* is not barred by *laches*. Defendants have not addressed this issue in their response brief and may have abandoned the position they advocated before the trial court. We conclude the court erred by finding that

laches barred Jones's petition.

¶ 18 *Laches* is an affirmative defense that, in general, may be pled in a section 2-615 motion to dismiss. *Hadley v. Ryan*, 345 Ill. App. 3d 297, 301, 803 N.E.2d 48, 52 (2003). "The doctrine of *laches* is applied when a party's failure to timely assert a right has caused prejudice to the adverse party." (Internal quotation marks omitted.) *Ashley v. Pierson*, 339 Ill. App. 3d 733, 737, 791 N.E.2d 666, 670 (2003). "[A] party asserting *laches* must prove two fundamental elements: (1) lack of due diligence by the party asserting a claim; and (2) prejudice to the party asserting *laches*." *Id.* at 739, 791 N.E.2d at 671. In a *certiorari* action, lack of diligence by the plaintiff is established by a delay of more than six months "between the accrual of the cause of action and the filing of the petition, unless the plaintiff provides a reasonable excuse for the delay." *Id.*

¶ 19 Here, defendants are unable to establish that Jones's petition was filed more than six months after his cause of action accrued. Jones was required to exhaust available administrative remedies before he could pursue a writ of *certiorari* in the courts. *Reyes v. Walker*, 358 Ill. App. 3d 1122, 1125, 833 N.E.2d 379, 381 (2005). The Administrative Review Board issued a final denial of Jones's administrative grievance on January 19, 2010. Jones filed his *certiorari* petition less than six months later, on June 25, 2010. As Jones's petition was filed within six months of the accrual of his cause of action, the trial court erred by finding his claims were barred by *laches*.

¶ 20 C. Sufficiency of the Complaint

¶ 21 Jones further argues the trial court erred by finding his petition failed to state a claim that would entitle him to relief. We agree.

¶ 22 Jones's petition complained of two alleged deficiencies in the disciplinary proceedings against him. First, Jones alleged that, contrary to the disciplinary report, Jones was never served with notice of the charges against him. Under *Wolff*, 418 U.S. at 564, an inmate is entitled to at least 24 hours' notice of the facts and charges being presented against him before a disciplinary hearing at which his liberty or property interests are at stake. Under DOC rules, an inmate must be served with a report of an alleged disciplinary violation within eight days of the incident giving rise to the charges. 20 Ill. Adm. Code 504.30(f) (2011). Jones maintains neither of these requirements was satisfied. Jones's complaint thus raises a factual allegation which, if proved true, would establish a violation of his due process rights.

¶ 23 Defendants maintain that dismissal was proper as the factual assertions in Jones's petition were contradicted by the accompanying materials—specifically, the disciplinary report, which indicates Jones was served with the disciplinary report on July 17, 2009, three days after the alleged incident and several weeks before the disciplinary hearing. However, Jones's claim that he was not served was supported by Jones's own affidavit, which also accompanied his petition, and Jones's claim is not necessarily inconsistent with the disciplinary report's indication that Jones received service. While defendants denigrate Jones's affidavit as "self-serving," they cite no authority allowing a court to resolve a factual discrepancy in the materials supporting the complaint against the plaintiff in ruling on a section 2-615 motion. The contradictory versions of the facts warrant reversal of the trial court's dismissal and demand a determination on the merits.

¶ 24 Second, Jones asserts no evidence supported the Adjustment Committee's determination that he committed the disciplinary offense of assaulting any person. Jones apparently believes the Adjustment Committee adopted the allegations of the disciplinary report

without reviewing the evidence. This claim does not state a cause of action as it is plainly refuted by the Adjustment Committee's report, attached to Jones's petition, which identifies the evidence it relied on in making its findings. Absent evidence to the contrary, the Administrative Committee's report controls over unsupported allegations in the complaint. See *Armstrong*, 336 Ill. App. 3d at 569, 783 N.E.2d at 1103. This unmeritorious claim need not be addressed on remand.

¶ 25

III. CONCLUSION

¶ 26 For the foregoing reasons, we reverse the trial court's judgment and remand for further proceedings consistent with this order.

¶ 27 Reversed and remanded.