2012 IL App (4th) 110233-U

Filed 3/23/12

NO. 4-11-0233

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

SHAWN HUGHES, Plaintiff-Appellant, v. MICHAEL P. RANDLE, Director, The Department of Corrections; JONATHAN R. WALLS, Warden, Western Illinois Correctional Center; and FORREST J. ASHBY, Assistant Warden of Programs, Western Illinois Correctional Center, Defendants-Appellees.	)	Appeal from Circuit Court of Livingston County No. 09MR130 Honorable Jennifer H. Bauknecht, Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in dismissing plaintiff's complaint for *certiorari* review of prison disciplinary proceedings where he was not denied due process because (1) plaintiff received timely notice of the adjustment committee hearing, which he attended, and (2) the disciplinary decision was based on evidence detailed in a written summary.

¶ 2 Plaintiff, Shawn Hughes, an inmate at Pontiac Correctional Center, appeals from the trial court's dismissal of his complaint seeking *certiorari* review of prison disciplinary proceedings, arguing, *inter alia*, defendants, employees of the Department of Corrections (DOC), denied him due process at the adjustment-committee level of proceedings. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff was an inmate at the Western Illinois Correctional Center (Western)

operated by DOC when the incidents complained of occurred.

¶ 5 On February 24, 2009, plaintiff had a trial court hearing in an unrelated civil case in which he was seeking restoration of good-conduct credit. The court dismissed plaintiff's claim, and he responded, "This is a bunch of bullshit." Plaintiff then began to rise from the table where he was seated, and DOC employees ordered him to stop. Plaintiff then responded, "fuckin[g] bullshit."

¶ 6 Plaintiff returned to Western and the incident was reported. Plaintiff was then ordered into segregation. Plaintiff refused to provide his inmate identification and housing unit number when asked by staff. Plaintiff also told staff they had better get the tactical unit ready because he was going to cause trouble. Correctional Officer Jeremiah Brown reported plaintiff told him, "you motherfuckers are going to ship me today." Plaintiff started to pull against Brown's grip as Brown escorted him. Plaintiff also yelled, "I'm going to show my ass [so] you might as well suit up now because I'm getting shipped today."

¶ 7 Brown led plaintiff to Officer Roberts and told Roberts plaintiff was to be placed in the segregation shower. Plaintiff refused to surrender the papers he was holding. Brown took plaintiff to the shower and began patting him down before placing plaintiff in the shower. However, according to Robert's incident report, plaintiff began resisting Brown and started swinging his elbows in such a way that Brown could not pat him down. Plaintiff also attempted to break Brown's grip on him. In addition, plaintiff refused three orders to give up his wrist restraints.

¶ 8 Plaintiff was then issued a disciplinary report, charging him with intimidation or threats, insolence, and disobeying a direct order, which are violations of DOC Rule Nos. 206,

304, and 403, respectively. In the report, Brown detailed the evidence leading to the charges and identified plaintiff by his state identification number. The report indicated service on plaintiff on February 24, 2009. However, plaintiff refused to sign an acknowledgment of receipt.

¶ 9 The record includes an investigational interview, signed by plaintiff, wherein plaintiff admitted he told the trial court judge, "This is a bunch of bullshit." Plaintiff also admitted he refused to surrender the papers he was holding and tell Brown his identification number. However, plaintiff denied elbowing Brown. Instead, plaintiff maintained Brown pushed him against the wall.

¶ 10 Following a February 27, 2009, disciplinary hearing, the adjustment committee found plaintiff guilty of all three charges. According to the committee's final summary report, plaintiff was identified by his state identification number as the inmate involved in the February 24, 2009, incidents. The committee found plaintiff guilty of insolence where Brown's report stated (and plaintiff admitted) he told the trial judge the dismissal of his civil action was "a bunch of bullshit." The committee also found plaintiff guilty of intimidation or threats where Brown's report indicated plaintiff pushed Brown and attempted to break away from Brown's grasp. The report also indicated plaintiff told the officers they should "suit up," which indicated plaintiff was going to cause problems requiring a response from the tactical unit. The committee also found plaintiff guilty of disobeying a direct order where Brown's report indicated plaintiff refused multiple orders to allow Brown to remove plaintiff's wrists restraints.

¶ 11 The committee recommended the following discipline for plaintiff: demotion to C-grade status; three-months' segregation; revocation of three-months' good-conduct credits; and a disciplinary transfer to another correctional facility. Jonathan Walls, the chief administrative

officer, concurred in the committee's disciplinary recommendations.

¶ 12 On April 6, 2009, plaintiff filed a grievance regarding the disciplinary decision, arguing assistant warden Forrest Ashby, the chair of the adjustment committee, was unprofessional, would not allow plaintiff to speak at the hearing, and threatened plaintiff with discipline if he did speak. The administrative review board interviewed Ashby, who stated plaintiff was argumentative and insolent during the hearing. However, Ashby denied making any threats to plaintiff and maintained he was professional during the hearing despite plaintiff's inappropriate conduct. Based on the interview with Ashby, the board concluded plaintiff's allegations of staff misconduct were not substantiated. As a result, it denied plaintiff's grievance and confirmed the discipline.

¶ 13 On November 25, 2009, plaintiff filed a "Petition for a Common Law Writ of *Certiorari*" against defendants, arguing the prison disciplinary proceedings violated his due-process rights.

¶ 14 On June 16, 2010, defendants filed a motion to dismiss plaintiff's complaint, arguing plaintiff failed to exhaust his administrative remedies and his petition was barred by *laches*.

¶ 15 On September 29, 2010, the trial court denied defendant's motion to dismiss and found plaintiff's July 13, 2010, response to that motion showed he had exhausted his administrative remedies.

¶ 16 On December 1, 2010, defendants filed a response to plaintiff's petition for *certiorari* review, which the trial court construed as a motion to dismiss, arguing plaintiff received all necessary due-process protections.

¶ 17 On February 28, 2011, the trial court granted defendants' motion to dismiss. The court found "plaintiff is not entitled to the relief he is requesting" because he "receive[d] his due process in connection with the underlying disciplinary reports."

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, plaintiff, proceeding *pro se*, argues (1) the procedures used by the adjustment committee during his disciplinary hearing violated DOC administrative regulations and his due-process rights, (2) he is entitled to *habeas corpus* relief, and (3) DOC's administrative regulations regarding inmate discipline are unconstitutional.

¶ 21 A. Standard of Review

¶ 22 "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 though 3-113 (West 2008))] and provides no other form of review." *Hanrahan v. Williams*, 174 Ill. 2d 268, 272, 673 N.E.2d 251, 253 (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, 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]." *Hanrahan*, 174 Ill. 2d at 272-73, 673 N.E.2d at 254. Because 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 is generally appropriate.

Alicea v. Snyder, 321 Ill. App. 3d 248, 253, 748 N.E.2d 285, 290 (2001).

¶ 23 B. Administrative Regulations

¶ 24 We initially note plaintiff argues the procedures used by the adjustment committee during his disciplinary hearing violated various prison regulations. However, prison regulations, such as those found in the administrative code, were " '*never* intended to confer rights on inmates or serve as the basis for constitutional claims.' " (Emphasis in original.) *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 25, 960 N.E.2d 1, 7 (quoting *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000)). Instead, such regulations " 'were designed to provide guidance to prison officials in the administration of prisons.' " *Dupree*, 2011 IL App (4th) 100351, ¶ 25, 960 N.E.2d at 7 (quoting *Ashley*, 316 Ill. App. 3d at 1258, 739 N.E.2d at 902). Thus, a violation of a state administrative regulation does not amount to an infringement of plaintiff's constitutional rights. See *Ashley*, 316 Ill. App. 3d at 1258-59, 739 N.E.2d at 902-03. Constitutionally, plaintiff is entitled to a certain amount of due process, which we discuss below.

¶ 25 C. Due-Process Claim

¶ 26 Plaintiff argues the procedures used by the adjustment committee during his disciplinary hearing violated his due-process rights. We disagree.

¶ 27 "Illinois inmates have a statutory right to receive good-conduct credits, and thus they have a liberty interest entitling them to procedural safeguards under the due-process clause of the fourteenth amendment." *Lucas v. Taylor*, 349 Ill. App. 3d 995, 1000, 812 N.E.2d 72, 76 (2004). However, the full array of rights due to a defendant in a criminal prosecution does not apply to an individual subject to a prison disciplinary proceeding. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). Instead, the process required in prison disciplinary proceedings includes: (1)

notice of the 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 upon which it relied and the reasons for the disciplinary action. *Wolff*, 418 U.S. at 563-66. In addition, the findings must be supported by some evidence in the record. *Superintendent, Massachusetts Correctional Institution at Walpole v. Hill*, 472 U.S. 445, 454-55 (1985).

¶ 28 1. *Notice of the Hearing*

¶ 29 In this case, the record shows plaintiff received the due process required by *Wolff*. To begin, the record shows plaintiff received notice of the charges more than 24 hours prior to the February 27, 2009, disciplinary proceeding. Brown detailed the evidence leading to the charges in a disciplinary report, which was served on plaintiff on February 24, 2009. The disciplinary report identified plaintiff by his state identification number and stated he committed the following offenses: insolence, intimidation or threats, and disobeying a direct order. The report also detailed the conduct underlying those charges. The report was sufficient to inform plaintiff of the alleged violation as well as conduct underlying the charges. Thus, plaintiff received timely written notice of the disciplinary charges against him prior to the adjustment-committee hearing.

¶ 30 2. *Plaintiff Appeared at the Hearing*

¶ 31 The final summary report contained in the record indicates plaintiff personally appeared at the disciplinary hearing and pleaded not guilty. On appeal, plaintiff maintains Ashby threatened plaintiff with disciplinary action if he spoke at the hearing and told his side of the story. The record indicates plaintiff filed a grievance, claiming he was prevented from speaking

at the hearing. According to a June 5, 2009, letter contained in the record, however, the administrative review board investigated the matter, interviewed Ashby, and determined plaintiff's allegations were unsubstantiated and did not merit a formal hearing. On the record before us, we have no way to dispute that finding.

¶ 32 We note plaintiff argues his due-process rights were violated where neither the grievance officer nor the prison review board sufficiently investigated his grievance. As previously stated, an inmate is entitled to due process during the initial hearing by the adjustment committee. See *Wolff*, 418 U.S. at 564-66. However, prison grievance procedures are not constitutionally mandated and therefore do not implicate an inmate's due-process rights. *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011). Further, the existence of a prison grievance procedure itself does not create a protected interest. *Grieveson v. Anderson*, 538 F.3d 763, 772-73 (7th Cir. 2008). As a result, plaintiff's allegation of an insufficient grievance investigation does not assert a due-process violation.

¶ 33 3. *Plaintiff Received a Written Summary*

¶ 34 The record shows plaintiff received a written summary of the adjustment committee's decision on March 9, 2009, at 3 p.m. The summary set forth the reasons for the committee's findings and stated the committee based its decision on Brown's incident report and detailed the facts from the report it relied on.

¶ 35 4. *Evidence Supported the Committee's Decision*

¶ 36 Finally, the adjustment committee's decision was supported by some evidence in the record. The minimum requirements of due process require that the findings of a prison disciplinary board must be supported by "some evidence" to prevent arbitrary deprivations. *Hill*,

472 U.S. at 454-55. The relevant inquiry on appeal is whether *any* evidence exists in the record that could support the findings of the prison disciplinary board. *Hill*, 472 U.S. at 455-56. A correction officer's written report alone can fulfill the "some evidence" requirement. *McPherson v. McBride*, 188 F.3d 784, 786 (7th Cir. 1999).

¶ 37 Here, the committee's finding on the insolence charge was supported by plaintiff's admission he told the trial court judge the dismissal of his civil case was "bullshit." Both Brown's and Robert's incident reports indicated plaintiff stated he threatened to cause problems and that the tactical team should suit up. Brown also indicated in his report plaintiff disobeyed direct orders to give up his wrist restraints. Thus, the record shows there was "some evidence" presented upon which to base the discipline.

¶ 38 In sum, plaintiff received timely notice of the adjustment committee hearing, which he attended, and the disciplinary decision was based on evidence detailed in a written summary provided to plaintiff. Because plaintiff received the process he was due, he failed to state a cause of action entitling him to *certiorari* relief.

¶ 39 D. Plaintiff's Remaining Claims

¶ 40 Plaintiff's appellate brief also argues (1) he is entitled to *habeas corpus* relief and (2) DOC’s administrative regulations regarding inmate discipline are unconstitutional. However, these arguments were not raised before the trial court. "[Issues] not presented to or considered by the trial court cannot be raised for the first time on review." *In re Marriage of Schneider*, 214 Ill. 2d 152, 172, 824 N.E.2d 177, 189 (2005). Instead, "[a]rguments raised for the first time on appeal are considered waived." *People v. Johnson*, 363 Ill. App. 3d 1060, 1075, 845 N.E.2d 645, 658 (2005). Thus, we will not consider plaintiff's arguments raised for the first time on appeal.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's judgment.

¶ 43 Affirmed.