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2013 IL App (4th) 120582-U

NO. 4-12-0582

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 7, 2013
Carla Bender
4th District Appellate
Court, IL

GERALD JONES,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
SALVADOR A. GODINEZ, as Successor to)	No. 11MR49
GLADYSE TAYLOR; and GUY PIERCE,)	
Defendants-Appellees.)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the circuit court did not err in denying plaintiff's complaint for *certiorari* review because plaintiff had no liberty interest requiring due process in his demotion to C-grade status and restricted commissary.

¶ 2 Plaintiff, Gerald Jones, an inmate at Pontiac Correctional Center (Pontiac), filed a complaint in the Livingston County circuit court seeking *certiorari* review of prison disciplinary proceedings. Plaintiff appeals the court's denial of his complaint, which alleged defendants, employees of the Illinois Department of Corrections (DOC), denied plaintiff due process by failing to serve him with adequate notice of two disciplinary reports prior to the hearing before the Program Committee (Committee). We affirm.

¶ 3

I. BACKGROUND

¶ 4

Plaintiff is currently serving a life sentence at Pontiac. On May 5, 2011, plaintiff filed a complaint for common-law writ of *certiorari*, requesting the circuit court reverse and expunge two disciplinary sanctions alleging plaintiff's misconduct on July 24, 2010, and July 26, 2010.

¶ 5

With regard to the disciplinary report issued July 24, 2010 (First Report), Correctional Officer Woods stated he properly served plaintiff with a copy on July 27, 2010. The First Report alleged plaintiff disobeyed a direct order and violated DOC rules by continuing to yell despite commands to stop. Plaintiff maintained at all stages of the proceedings that he never received a copy of the First Report, which, he asserted, constituted inadequate notice and deprived him of his right to due process.

¶ 6

With regard to the disciplinary report issued July 26, 2010 (Second Report), Woods stated he served plaintiff on July 27, 2010, at the same time he served the First Report. The Second Report alleged plaintiff again disobeyed a direct order and violated DOC rules by continuing to yell despite commands to stop. At all stages of the proceedings, plaintiff maintained he received only a blank copy of the Second Report. Officer Woods admitted he did not look at plaintiff's copy prior to serving it upon plaintiff, so he could not testify as to its appearance. He did, however, explain it would be uncommon for the copy to be blank. Plaintiff argued the service of the blank report constituted inadequate notice and, thus, deprived him of his right to due process.

¶ 7

On August 3, 2010, the Committee, an entity which conducts hearings on lesser disciplinary charges, conducted a hearing regarding the First Report and Second Report (20 Ill.

Admin. Code § 504.50(d)(3) (2003)). Following the hearing, the Committee found plaintiff guilty of each report, "based on the observation of the reporting employee and the positive identification of the offender." With regard to the First Report, the Committee ordered plaintiff downgraded to "C-grade" for one month, which meant plaintiff received no privileges other than yard, visits, and limited commissary access (20 Ill. Admin. Code 504.130 (2003)). With regard to the Second Report, the Committee restricted plaintiff's commissary privileges for 30 days.

¶ 8 Plaintiff filed grievances regarding each disciplinary action, maintaining he received insufficient notice of both reports and, therefore, was deprived of his right to due process. The Administrative Review Board and the Director of DOC denied both grievances.

¶ 9 Having exhausted his administrative remedies, plaintiff, in May 2011, filed a complaint for writ of *certiorari* in the circuit court. Plaintiff later submitted a motion seeking compensatory and punitive damages, but the Livingston County Circuit Clerk returned the motion without filing it, citing a lack of jurisdiction. Plaintiff's complaint proceeded to hearing on May 9, 2012. After reviewing the evidence presented to the Committee and hearing testimony from both Officer Woods and plaintiff, the circuit court denied plaintiff's complaint for *certiorari* review, finding Officer Woods properly served notice on plaintiff in accordance with plaintiff's due process rights. The court also remarked it had never seen a blank report issued to an inmate despite reviewing over one hundred cases from inmates challenging disciplinary reviews and stated, "I would say that it's absolutely impossible for there to be an entirely blank report served on anybody."

¶ 10 On May 16, 2012, plaintiff filed a motion for reconsideration, arguing defendant presented no evidence to contradict plaintiff's evidence. He also filed a motion for the

disqualification and recusal of the circuit court judge, asserting the judge showed signs of "hate" and "bias" toward plaintiff that deprived plaintiff of a fair hearing. In the motion to disqualify, plaintiff contended the judge had a personal interest in the outcome of the case, behaved more like defendant's counsel than a judge, and denied plaintiff access to the courts by refusing to hear all of his claims. On June 4, 2012, the court denied both motions.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Plaintiff asserts the circuit court erred in dismissing plaintiff's complaint for *certiorari* relief, arguing the proceedings against him deprived him of his right to due process.

¶ 14 A. Review of Agency Decisions

¶ 15 “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 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 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).

¶ 16 B. Sufficiency of Evidence at Committee Hearing

¶ 17 Plaintiff first asserts the Committee acted arbitrarily and capriciously in finding he violated DOC rules; therefore, he contends the circuit court erred in failing to grant *certiorari* review. With regard to both the First Report and Second Report, the Committee's findings indicate witnesses identified plaintiff as breaking DOC rules by yelling and refusing to obey commands that he stop yelling. Plaintiff denied the allegations and asserted DOC failed to serve him copies of each report outlining the allegations against him so that he could assert an appropriate defense. In particular, plaintiff stated he would have called witnesses in his defense had he known which allegations were scheduled for hearing. However, plaintiff did not express these concerns to the Committee or within his grievances; he raised the issue for the first time before the circuit court. In raising the issue before the court, plaintiff only asserted he would have called a fellow inmate as a witness, but he did not demonstrate how this witness would have contributed to plaintiff's defense of the claim. Plaintiff contended the Committee's decision to move forward with the hearing despite plaintiff's lack of notice deprived him of his right to due process and constituted bias and misconduct.

¶ 18 In this situation, plaintiff had the opportunity to explain to the Committee that he failed to receive notice of both reports. The Committee, in turn, had an opportunity to evaluate plaintiff's credibility in light of the other witnesses and documentation. We conclude the Committee exercised its administrative discretion in choosing to disbelieve plaintiff's statements in which he argued he did not have notice of the proceedings. Therefore, the Committee's finding was not arbitrary and capricious, nor was it against the manifest weight of the evidence.

¶ 19

C. Due Process for Inmates

¶ 20

Plaintiff next asserts the Committee violated his due process rights by failing to give him adequate notice of proceedings, which resulted in his inability to mount a proper defense. To successfully claim a due process violation, a plaintiff must show a deprivation of a life, liberty, or property interest. See *Webb v. Lane*, 222 Ill. App. 3d 322, 326, 583 N.E.2d 677, 681 (1991). With regard to inmates, due process interests are generally limited to sanctions which impose "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995). For example, a disciplinary sanction which results in the loss of good-conduct credit requires due process. *Wolff*, 418 U.S. 539, 564, 566 (1974). Alternatively, confinement in disciplinary segregation for a limited period of time fails to deprive an inmate of a cognizable liberty interest. *Sandin*, 515 U.S. at 486, *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1116, 942 N.E.2d 758, 763 (2011).

¶ 21

In *Taylor*, the plaintiff received the following sanctions: (1) disciplinary segregation for 22 months; (2) reduction to C-grade status for 25 months; (3) restricted commissary for 25 months; and (4) loss of one month of good-conduct credit. *Taylor*, 406 Ill. App. 3d at 1113, 942 N.E.2d at 760. The *Taylor* court held the loss of good-conduct credit required due process, but the plaintiff's remaining sanctions did not. *Taylor*, 406 Ill. App. 3d at 1119, 942 N.E.2d at 765.

¶ 22

If an inmate subject to a disciplinary proceeding receives a sanction imposing an "atypical and significant hardship," such as the loss of good-conduct credit, the due process required 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 v. McDonnell*, 418 U.S. at 564.

¶ 23 D. Whether the Disciplinary Proceedings Deprived Plaintiff of Due Process

¶ 24 1. *First Report*

¶ 25 Plaintiff first asserts he was denied his right to due process because defendants never served him with the First Report. While plaintiff claims he never received a copy of the First Report, Officer Woods, based on his review of his documentation, verified he served notice upon plaintiff on July 27, 2010. Assuming, *arguendo*, DOC officials failed to serve appropriate notice upon plaintiff, plaintiff has failed to demonstrate a viable due process claim because a sanction of 30 days' restricted commissary does not constitute a cognizable due process interest. See *Taylor*, 406 Ill. App. 3d at 1119, 942 N.E.2d at 765; see also *Hadley v. Snyder*, 335 Ill. App. 3d 347, 354, 780 N.E.2d 316, 323 (2002) (no liberty interest in prison programs or services).

¶ 26 Moreover, the circuit court was in a better position to judge the credibility and reliability of the witnesses. See *Falcon v. Thomas*, 258 Ill. App. 3d 900, 909, 629 N.E.2d 789, 795 (1994) (trial court is in a better position to judge credibility and that decision will not be disturbed unless it is against the manifest weight of the evidence). In this situation, the court believed Officer Woods' testimony and documentation over plaintiff's testimony. We conclude the court's decision to adjudge the officer more credible in this instance was not against the manifest weight of the evidence.

¶ 27 Therefore, we hold the trial court did not err in denying plaintiff's complaint for *certiorari* review with regard to the First Report.

¶ 28

2. Second Report

¶ 29

Plaintiff next argues defendants denied his right to due process because the Second Report he received was blank, thus failing to alert him to the allegations against him. Plaintiff claims this resulted in his inability to assert a proper defense at the hearing. Officer Woods verified he served a copy of the Second Report upon plaintiff on July 27, 2010, but admitted he never looked at the copy tendered to plaintiff to determine whether it was blank. He did note it was "not common" for an inmate's copy to be blank. After determining plaintiff violated DOC rules, the Committee imposed a sanction of C-grade status, which resulted in restricted commissary and the reduction of other privileges.

¶ 30

As explained above, plaintiff had no due process interest at stake in this instance because a sanction of one month in C-grade does not demonstrate the "atypical and significant hardship" required by *Sandin* for *certiorari* relief. See *Taylor*, 406 Ill. App. 3d at 1119, 942 N.E.2d at 765. Plaintiff has not been denied any good-conduct credit, as his current sentence is life imprisonment. Without the loss of a protected liberty interest, plaintiff's due process claim fails. See *Williams v. Ramos*, 71 F.3d 1246, 1250 (7th Cir. 1995) ("Where there is no liberty interest, there can be no due process violation").

¶ 31

Moreover, even if plaintiff had a liberty interest in his demotion, plaintiff received due process with regard to the Second Report. After the hearing for *certiorari* on May 9, 2012, the circuit court, noting it had presided over one hundred prison disciplinary reviews, stated it had never before received a complaint about a blank notice. The court then determined it did not believe plaintiff's assertion that he received a blank notice and, conversely, found he did indeed receive proper service of the allegations sufficient to satisfy due process. The court was not

required to believe plaintiff's testimony regarding a blank notice; it could choose to believe or disbelieve plaintiff's testimony. Under the circumstances, we hold the trial court's decision to deem plaintiff's testimony incredible was not against the manifest weight of the evidence.

Therefore, we conclude the circuit court did not err in denying plaintiff's request for *certiorari* review with regard to the Second Report.

¶ 32 C. Whether the Trial Judge Exhibited Bias, Hate, or Personal Motivation

¶ 33 Plaintiff also contends he was denied a fair hearing due to the trial judge's hate, bias, and motivation to help the defendants. Throughout the proceedings, the judge made note of (1) plaintiff's litigious behavior, (2) stated she had never in her experience heard a complaint regarding a blank ticket, and (3) returned plaintiff's proposed filings when the court lacked jurisdiction. We find nothing about these behaviors shows bias, personal motivation, favoritism, or personal hatred toward plaintiff. The record does not support plaintiff's assertion and, thus, we reject it.

¶ 34 III. CONCLUSION

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

¶ 36 Affirmed.