

NOTICE
This Order was filed under
Supreme Court Rule 23 and is
not precedent except in the
limited circumstances allowed
under Rule 23(e)(1).

2022 IL App (4th) 210186-U
NO. 4-21-0186
IN THE APPELLATE COURT
OF ILLINOIS

FILED
February 16, 2022
Carla Bender
4th District Appellate
Court, IL

FOURTH DISTRICT

DESHAWN GARDNER,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
SETH HOUGH, MAJOR SORENSEN, C. JENNING,)	No. 17MR991
SIMMS OFFICER, JANA K. CARIE, ELDON L.)	
COOPER, JAMEY GARRETT, ANN LAHR,)	Honorable
NICHOLAS R. LAMB, and JOHN B. BALDWIN,)	Rudolph M. Braud Jr.,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

ORDER

- ¶ 1 *Held:* Plaintiff's due process rights were not violated by defendants' denial of his request to present certain documentary evidence at his prison disciplinary hearing.
- ¶ 2 In July 2017, plaintiff, Deshawn Gardner, an inmate in the custody of the Illinois Department of Corrections (Department), filed a complaint against defendants, officers of the Department, alleging defendants violated his due process rights by denying, without explanation, his request to present documentary evidence at his disciplinary hearing. Plaintiff sought a common law writ of *certiorari*. The trial court granted defendants' motion to dismiss the complaint, pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), and plaintiff appealed. We reversed in part and remanded, finding plaintiff had stated a

claim for a common law writ of *certiorari*. See *Gardner v. Hough*, 2020 IL App. (4th) 190180-U.

¶ 3 On remand, defendants answered the complaint and filed a motion for summary judgment, which the trial court granted. Plaintiff appeals from this decision, arguing the trial court erred in finding no violation of his due process rights in the administrative record. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In July 2017, plaintiff filed a complaint for a common law writ of *certiorari* seeking judicial review of prison disciplinary proceedings that resulted in the loss of one year of good conduct credits after being found guilty of engaging in security threat group activity and abusing his telephone privileges. In the complaint, plaintiff alleged, in relevant part, his due process rights were violated where defendants denied, without explanation, his request to present transcripts of the monitored phone calls as evidence at the disciplinary hearing. For a more detailed discussion of the disciplinary proceedings, see our prior decision in *Gardner v. Hough*, 2020 IL App (4th) 190180-U, ¶¶ 6-9.

¶ 6 Ultimately, the trial court dismissed the complaint, and plaintiff appealed. We reversed the trial court's judgment in part and remanded for further proceedings strictly on plaintiff's claim his due process rights were violated by defendants' denial of his request to present transcripts of monitored phone calls as evidence at the disciplinary hearing. *Id.* ¶ 21.

¶ 7 On remand, in December 2020, defendants filed an answer to the complaint, which included the administrative record of the disciplinary proceedings. Defendants also filed a motion for summary judgment and attached the verified declaration of correctional lieutenant Joseph Jennings. In the declaration, Jennings states he supervises four different intelligence

units, which investigate and attempt to deter security threat group activity in Department facilities. The intelligence units monitor and record certain inmate phone calls. “With very limited exceptions,” Department employees not assigned to an intelligence unit, including those assigned to review inmate disciplinary reports, do not have access to the recordings. Inmates also do not have access to the recordings. According to Jennings, “[t]he disclosure of Intelligence Unit documents, including selected telephone recordings, would be detrimental to the goals and missions of the Intelligence Unit because it could potentially reveal the law enforcement investigatory methods utilized by [the Department] in its mission to prevent [security threat group] violence and criminal enterprise.” Jennings further stated he had listened to the relevant recordings and they could be made available to the trial court for an *in camera* inspection if necessary.

¶ 8 Plaintiff filed a response to defendants’ motion, claiming Jennings’s declaration contained false statements. Plaintiff attached adjustment committee decisions from two unrelated disciplinary proceedings, which he claimed demonstrated Department employees reviewing disciplinary reports did in fact have access to intelligence unit recordings and documents. Defendants filed a motion to strike the adjustment committee decisions because they were from unrelated disciplinary proceedings not relevant to the instant proceeding. Following a telephone hearing, the trial court granted defendants’ motions to strike and for summary judgment, finding Lieutenant Jennings’s declaration was sufficient to satisfy the applicable due process requirements.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Plaintiff argues the trial court erred in granting defendants’ motion for summary judgment because the administrative record shows his due process rights were violated where defendants denied his request for documentary evidence without an explanation. “A trial court’s grant of summary judgment is reviewed *de novo*.” *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 146 (2003).

¶ 12 “A common-law writ of *certiorari* is the 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 *et seq.* (West 2014)) and the act provides for no other form of review.” *Fillmore v. Taylor*, 2019 IL 122626, ¶ 67. “The purpose of the writ was, and is, to have the entire record of the inferior tribunal brought before the court to determine, from the record alone, whether that body proceeded according to the applicable law.” *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 427 (1990). “If the circuit court, on the return of the writ, finds from the record that the inferior tribunal proceeded according to law, the writ is quashed; however, if the proceedings are not in compliance with the law, the judgment and proceedings shown by the return will be quashed.” *Id.*

¶ 13 Prisoners have a liberty interest, created by state statute, in a shortened sentence that results from application of good-conduct credits. *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974). Therefore, these credits cannot be taken from a prisoner through prison disciplinary proceedings “without the minimal safeguards afforded by the Due Process Clause of the Fourteenth Amendment.” *Ponte v. Real*, 471 U.S. 491, 495 (1985). However, because prison disciplinary proceedings differ from a criminal prosecution, “the full panoply of rights due a defendant in such proceedings does not apply.” (Internal quotation marks omitted.) *Id.* Instead, a

prisoner facing possible revocation of good-conduct credits is entitled only to “the due process minima outlined in *Wolff*” (*id.*)—*i.e.*, the prisoner “must receive (1) advance written notice of the disciplinary charges, (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense, and (3) a written statement by the fact finder of the evidence relied on and the reasons for the disciplinary action.” *Fillmore*, 2019 IL 122626, ¶ 57 (citing *Wolff*, 418 U.S. at 563-67).

¶ 14 The right to call witnesses and present documentary evidence at a prison disciplinary hearing is limited in that “[p]rison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority, as well as to limit access to other inmates to collect statements or to compile other documentary evidence.” *Wolff*, 418 U.S. at 566. Although prison officials have the discretion to refuse inmate requests, they still must explain, “in a limited manner,” the reason for the refusal. *Ponte*, 471 U.S. at 497. “[T]hey may do so either by making the explanation a part of the ‘administrative record’ in the disciplinary proceeding, or by presenting testimony in court if the deprivation of a ‘liberty’ interest is challenged because of that claimed defect in the hearing.” *Id.* “In other words, the prison officials may choose to explain their decision at the hearing, or they may choose to explain it ‘later.’ ” *Id.* “[S]o long as the reasons are logically related to preventing undue hazards to ‘institutional safety or correctional goals,’ the explanation should meet the due process requirements as outlined in *Wolff*.” *Id.*

¶ 15 Here, we find plaintiff was not deprived of his limited right to present documentary evidence at his disciplinary hearing when defendants denied his request for transcripts of the relevant phone conversations and did not provide a contemporaneous explanation for the denial. Plaintiff did not have an absolute right to the transcripts he requested,

but he did have a right to an explanation, “in a limited manner,” for the refusal. See *Ponte*, 471 U.S. at 497. While defendants did not provide plaintiff with a contemporaneous explanation, they did provide an explanation in the trial court through the verified declaration of correctional lieutenant Joseph Jennings. Jennings stated that “disclosure of Intelligence Unit documents, including selected telephone recordings, would be detrimental to the goals and missions of the Intelligence Unit because it could potentially reveal the law enforcement investigatory methods utilized by [the Department] in its mission to prevent [security threat group] violence and criminal enterprise.” Because this explanation is “logically related to preventing undue hazards to ‘institutional safety or correctional goals,’ ” it is sufficient to meet the due process requirements outlined in *Wolff. Id.* Accordingly, we find plaintiff was not denied due process when defendants rejected his request to present transcripts of the monitored phone calls at the disciplinary hearing.

¶ 16 In closing, we note plaintiff argues Jennings’s declaration contains false statements because the adjustment committee decisions he attached to his response demonstrate Department employees assigned to review disciplinary reports do in fact have access to intelligence unit recordings. However, the trial court properly struck these documents as they related to separate disciplinary proceedings and were not part of the administrative record in the instant case. See *Stratton*, 133 Ill. 2d at 427 (stating the court is to review only the record of the administrative proceedings). Therefore, we decline to address plaintiff’s contention.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we affirm the trial court’s judgment.

¶ 19 Affirmed.