

NOTICE

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FILED

April 28, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150950-U

NO. 4-15-0950

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

TYRONE CALHOUN,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Brown County
DEPARTMENT OF CORRECTIONS, JOSEPH)	No. 14MR35
JENNINGS, TARRY WILLIAMS, RICHARD)	
DAVIS, LARRY HENDRIX, TARA GOINS, RICK)	
ANDERSON, WILLIAM TWADDELL, SALVADOR)	
GODINEZ, BILLIE GREER, LESLIE MCCARTY,)	Honorable
RICK ORR, and MICHELLE OLSON,)	Jerry J. Hooker,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Turner and Justice Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court properly dismissed plaintiff's complaint for failure to state a claim pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)).
- ¶ 2 In February 2015, plaintiff, Tyrone Calhoun, an inmate within the Illinois Department of Corrections (DOC), filed his second amended complaint containing numerous allegations, including claims that plaintiff was denied (1) the equal protection of the law under the fourteenth amendment; (2) fair procedures and a fair disciplinary decision; and (3) access to the courts. The complaint also contained an allegation the defendants retaliated against plaintiff in violation of his first amendment rights. In May 2015, defendants filed a motion to dismiss the second amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735

ILCS 5/2-615 (West 2014)). In July 2015, the trial court dismissed the complaint, finding plaintiff failed to state a claim.

¶ 3 Plaintiff appeals, arguing (1) he stated a claim for violations of his right to equal protection of the law, (2) the trial court erred in not admonishing plaintiff he could amend his claim of denial of access to the courts to provide proof of actual injury, (3) he alleged sufficient facts to state a claim defendants retaliated against him for exercising his first amendment rights, and (4) he stated a claim for violations of his due-process rights.

¶ 4 I. BACKGROUND

¶ 5 A. Factual Background

¶ 6 In November 2012, plaintiff, an inmate at Pinckneyville Correctional Center, was transferred to Western Illinois Correctional Center (Western). At that time, plaintiff identified as an "original Ethiopla's [sic] Jew (i.e., 'Black Jew' or 'Israelite'.)" On December 1, 2012, plaintiff, along with 30 or more inmates, was in the North Yard in the weight lifting area, purportedly discussing religious services available at the prison with a group of four other black inmates. White and Hispanic prisoners also stood in groups of five, six, and seven in the weight lifting area. As plaintiff left the weight lifting area, a man (later identified as defendant Warden Tarry Williams) came up to the fence and ordered plaintiff and four other black prisoners to present identification cards. Western's prison Intel Unit was called to the North Yard and plaintiff and the four black prisoners were placed in the segregation unit, where they were placed on investigative status.

¶ 7 1. *First Grievance*

¶ 8 On December 17, 2012, plaintiff filed a grievance claiming he and the four other black prisoners were discriminated against based on their race on December 1, 2012, when they

were asked for their identification and placed in segregation. The grievance officer's report indicates counselor Cowick contacted Williams' assistant, defendant Rick Anderson. According to the report, Anderson stated plaintiff's claims could not be substantiated. Counselor Cowick's response to plaintiff's first grievance stated no racial profiling occurred and "[n]o accusations could be found accountable." Defendant Tara Goins, a grievance officer, recommended the first grievance be denied, and Williams concurred. Plaintiff appealed this decision, and defendant Leslie McCarty, a member of the administrative review board, recommended denying the first grievance, finding Williams' claimed misconduct could not be substantiated. Defendant Salvador Godinez concurred.

¶ 9 *2. Second Grievance*

¶ 10 On December 19, 2012, plaintiff filed an emergency second grievance claiming prison officials retaliated against him for filing grievances and corresponding with prison authorities and outside lawyers. The second grievance claimed the prison officials retaliated against him for filing his December 17, 2012, grievance by preventing him access to legal books and his legal correspondence boxes and placing him in segregation. The second grievance claimed his placement in segregation and defendant Michelle Olson's failure to respond to plaintiff's letters and request slips operated to deny him access to the courts. Plaintiff also complained defendant Joseph Jennings retaliated against him by conducting a drug test, refusing to release plaintiff from segregation, and indicating he would be filing a disciplinary report regarding the December 1, 2012, incident in the North Yard. The second grievance also alleged he was denied access to the courts because his pending case in the court of claims was dismissed. Williams denied the second grievance as an emergency and allowed a nonexpedited review of the grievance. Counselor Cowick's response to the second grievance indicated Jennings had

been contacted and stated he performed his duties according to DOC policies. Goins also denied the second grievance, and plaintiff appealed. The administrative review board recommended denying the second grievance as unsubstantiated, and Godinez concurred.

¶ 11 *3. Third Grievance*

¶ 12 On December 29, 2012, Jennings issued plaintiff a disciplinary report for violating Rule 205 of section 504 app. A of Title 20 of the Illinois Administrative Code (20 Ill. Adm. Code 504 app. A (2011)), "Security Threat Group or Unauthorized Organizational Activity." Plaintiff pleaded not guilty and provided the adjustment committee, composed of defendants Richard Davis and Larry Hendrix, with an affidavit attesting his innocence. The final summary report indicated plaintiff was observed congregating with four other inmates on the North Yard. The group members were identified and taken to the segregation unit, at which point one of the prisoners stated the group was discussing the lack of religious services for African Hebrew Israelites at Western. The adjustment committee reduced the charges against plaintiff and found him in violation of section 504 app. A of Title 20 of the Administrative Code (20 Ill. Adm. Code 504 app. A (2011)), Rule 404 (violation of rules), and referenced Inmate Orientation Manual Rule 43. Plaintiff was given one month of C-grade status and 15 days in the segregation unit.

¶ 13 On January 24, 2013, plaintiff filed a third grievance. The third grievance alleged Jennings had not fully set forth the charges in the disciplinary report because the original report did not allege a Rule 404 violation, of which the adjustment committee found plaintiff in violation. Plaintiff alleged nothing in the disciplinary report could substantiate the charge of participating in an organized and unauthorized meeting. The third grievance also alleged violations of section 504.80 of Title 20 of the Administrative Code (20 Ill. Adm. Code 504.80

identification cards were later removed from the general population and placed in segregation. Plaintiff alleged Williams violated the equal-protection clause of the fourteenth amendment by purposefully and intentionally discriminating against black prisoners.

¶ 18 In a subsection entitled "Unreasonable Seizures," the complaint challenged the disciplinary report in which Jennings purportedly separated the definition of "security threat group" and "unauthorized organization activity." Plaintiff contended the adjustment committee did not give him credit for the 33 days he spent in segregation on investigative status before it sentenced him to an additional 15 days in segregation. The complaint alleged this refusal to give plaintiff credit constituted false imprisonment and "wrongful excessive confinement" in violation of his fourth amendment rights.

¶ 19 *2. Disciplinary Decision and Procedures*

¶ 20 The complaint alleged the adjustment committee took it upon themselves to reduce "the charge of 205-STG [(security threat group)] or UOA [(unauthorized organized activity)], and re-charge the plaintiff with a 'new offense' of '404'—violation of Rules and 'Rule #43'—referred to 'Inmate's Orientation Manual.' " Pursuant to procedure, plaintiff filed his third grievance pointing out the "unwritten segregation policy," which treated black prisoners differently from other prisoners. The complaint alleged Goins, in recommending the third grievance be denied, failed to further an investigation of the claims. The complaint also alleged the administrative review board and Godinez failed to further an investigation into plaintiff's third grievance.

¶ 21 *3. Retaliation Allegations*

¶ 22 In count III, plaintiff alleged he sent letters to various prison officials informing them he was not affiliated with street gangs. Upon the officials' failure to investigate his claim

of "none-affiliation," plaintiff then mailed letters to the John Howard Association. On December 16, 2012, plaintiff sent more letters to prison officials requesting information as to why he was placed on investigatory status and asking what compelling governmental interest was served by placing "these African Americans" in segregation. Receiving no response, on December 17, 2012, plaintiff filed his first grievance. The complaint alleged Jennings knew of this grievance and, in retaliation, on December 19, 2012, made plaintiff complete a drug drop. Also in retaliation, the complaint alleged, Jennings filed the disciplinary report regarding the December 1, 2012, incident in the prison yard. These events prompted plaintiff to file his second grievance, which claimed Jennings retaliated against plaintiff and raised claims that Olson denied plaintiff access to the courts because he was denied access to the law library and his legal boxes and, as a result, a pending claim in the court of claims was dismissed. Plaintiff also alleged Goins, the administrative review board, and Godinez all failed to further an investigation into the second grievance.

¶ 23

4. Access to the Courts

¶ 24 Count IV alleged plaintiff was denied access to eight separate legal boxes, which had been forwarded from Statesville Correctional Center upon plaintiff's transfer to Western. Plaintiff wrote letters and filled out several request slips, which he sent to Olson in the law library. The letters made Olson aware of an action in the court of claims, which had been dismissed. The complaint alleged Olson's refusal to allow plaintiff access to legal correspondence boxes and other legal materials denied plaintiff access to the courts because it caused him to miss the deadline to file a notice of appeal with the court of claims. In addition to his second grievance, plaintiff alleged he filed another grievance on December 26, 2012, that stated he had 30 days to file a notice of appeal with the court of claims and his many requests for

supplies from the law library went largely unanswered. This grievance claimed Olson came to plaintiff's cell, gave him two envelopes, and told him to write another grievance. The complaint alleged Cowick's response to this grievance stated that Olson was "gone during the time [plaintiff] refer[red] to. She got back on [December 17, 2012,] and went to segregation that day."

¶ 25

5. Claims for Relief

¶ 26

In a subsection entitled "Claims for Relief," the complaint alleged Jennings and Williams violated the equal-protection clause of the fourteenth amendment by discriminating against plaintiff on the basis of race. The complaint further alleged Davis, Hendrix, and Williams violated plaintiff's rights under the fourth and fourteenth amendments by denying plaintiff credit for time served in segregation while on investigatory status and failing to "timely release" him from segregation. In addition, plaintiff alleged Jennings violated his first amendment rights by retaliating against him for filing grievances. Plaintiff also alleged Williams and Goins violated his first amendment rights in turning a blind eye to his claim Olson denied him access to the courts. Finally, plaintiff alleged Godinez, McCarty, and Greer violated his first amendment rights in failing to curb a "known patter[n]" of Olson's retaliation against plaintiff for exercising his right to access the courts.

¶ 27

6. Relief Requested

¶ 28

For relief, plaintiff requested a declaratory judgment stating defendants had violated his constitutional rights and DOC rules. Plaintiff also requested an injunction ordering (1) Williams to expunge the disciplinary conviction from his record; (2) Godinez to reopen an investigation into the "unusual incidents" described in the complaint; (3) Olson to "stop

retaliating against" plaintiff and to provide him with various supplies; and (4) McCarty, Greer, and Goins to follow DOC rules.

¶ 29 C. Motion To Dismiss

¶ 30 Defendants filed a motion to dismiss plaintiff's second amended complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)). The motion argued plaintiff failed to state claims for (1) *mandamus* relief, (2) violations of his constitutional rights, (3) retaliation under the first amendment, and (4) access to the courts. In July 2015, the trial court entered an order dismissing plaintiff's complaint without prejudice for failing to state a claim. The order did not grant plaintiff leave to amend his complaint.

¶ 31 Plaintiff filed a motion to reconsider and for reargument. Plaintiff's reply brief in support of his motion to reconsider included a number of exhibits, which he claimed were "newly discovered evidence." These exhibits were handwritten letters from 2012 and 2013, in which plaintiff informed various defendants he was not a gang member and addressed the grievances he filed. The court denied the motion to reconsider, finding no (1) newly discovered evidence not available at the time of the hearing, (2) changes in the law, and (3) errors in the court's prior application of existing law.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 Plaintiff appeals, arguing (1) he stated a claim for violations of his right to equal protection of the law, (2) the trial court erred in not admonishing plaintiff he could amend his claim of denial of access to the courts to provide proof of actual injury, (3) he alleged sufficient facts to state a claim defendants retaliated against him for exercising his first amendment rights, and (4) he stated a claim for violations of his due-process rights.

¶ 35

A. Jurisdiction

¶ 36 Defendants raise a potential jurisdictional issue because the trial court's order dismissed the complaint without prejudice. "Where a dismissal is based upon a determination that the complaint is insufficient to state a cause of action as a matter of law, rather than upon technical defects in the complaint, then the order is final and appealable by its very nature. A general dismissal with no right to amend, and no request for leave to amend, is a final, appealable order." *In re Estate of Hopkins*, 166 Ill. App. 3d 652, 655, 520 N.E.2d 415, 417 (1988). In this case, the court did not grant plaintiff leave to amend his complaint, nor did he seek leave to do so. Rather, plaintiff filed a motion for reconsideration, which the court denied. Because plaintiff did not seek leave to amend his complaint, and the court did not grant leave to amend, we conclude the court's order is a final order for purposes of appeal. We turn now to the merits of this appeal.

¶ 37

B. Standard of Review

¶ 38 Where a complaint fails to state a claim on which relief can be granted, dismissal under section 2-615 is appropriate. *Duane v. Hardy*, 2012 IL App (3d) 110845, ¶ 10, 975 N.E.2d 1266. We accept all well-pleaded facts as true and view those facts in the light most favorable to the plaintiff. *Id.* Illinois is a fact-pleading state and, as such, a plaintiff must plead facts in support of each element of a legally recognized claim. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451, 804 N.E.2d 536, 543 (2004). "A complaint is insufficient if it states mere conclusions of fact or law, and it must, at a minimum, allege facts sufficient to set forth the essential elements of a cause of action." *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 27, 972 N.E.2d 1238. "We review *de novo* an order granting a section 2-615 motion." *Bell v. Hutsell*, 2011 IL 110724, ¶ 9, 955 N.E.2d 1099.

¶ 39 *Mandamus* is an extraordinary remedy used to enforce the performance of official duties by a public official where no exercise of discretion exists. *Duane*, 2012 IL App (3d) 110845, ¶ 11, 975 N.E.2d 1266. "A writ of *mandamus* will not be granted unless the plaintiff can show a clear, affirmative right to relief, a clear duty of the defendant to act, and clear authority in the defendant to comply with the writ." *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229, 710 N.E.2d 798, 813 (1999). "*Mandamus* may be used to compel a public officer to perform a duty that does not involve the exercise of discretion by the officer [citation], but *mandamus* will not issue to direct the manner in which a discretionary act is performed [citation], even if the judgment or discretion has been erroneously exercised." *Turner-El v. West*, 349 Ill. App. 3d 475, 479-80, 811 N.E.2d 728, 733 (2004).

¶ 40 C. Equal Protection

¶ 41 Plaintiff first contends he is entitled to relief based on a violation of his equal-protection rights under the fourteenth amendment. In certain cases, allegations of constitutional violations can state a cause of action for *mandamus* relief. *Crump v. Illinois Prisoner Review Board*, 181 Ill. App. 3d 58, 62, 536 N.E.2d 875, 878 (1989). However, where, as here, plaintiff fails to state a claim regarding the equal-protection violations, plaintiff cannot demonstrate a clear right to *mandamus* relief.

¶ 42 We apply the same standard under both the United States Constitution and the Illinois Constitution when we conduct an equal-protection analysis. *People v. Richardson*, 215 IL 118255, ¶ 9, 32 N.E.3d 666. "A threshold matter in addressing an equal protection claim is determining whether the individual claiming an equal protection violation is similarly situated to the comparison group." *In re M.A.*, 2015 IL 118049, ¶ 25, 43 N.E.3d 86.

"As our Supreme Court has noted, equal protection 'does not forbid all classifications' (*Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)), '[i]t simply keeps governmental decisionmakers from treating differently persons *who are in all relevant respects alike*.' (Emphasis added.) (*Id.*) Evidence of different treatment of unlike groups does not support an equal protection claim. *Fournier v. Sebelius*, 718 F.3d 1110, 1124 (9th Cir. 2013)." (Emphasis in original.) *In re Derrico G.*, 2014 IL 114463, ¶ 92, 15 N.E.3d 457.

Where a party's equal-protection claim fails to show he is similarly situated to the comparison group, his equal-protection challenge fails. *M.A.*, 2015 IL 118049, ¶ 26, 43 N.E.3d 86.

¶ 43 Plaintiff was put into segregation on investigatory status for an alleged violation of DOC Rule 205. Rule 205 makes the following conduct an offense:

"Engaging in security threat group or unauthorized organizational activities, meetings[,] or criminal acts; displaying, wearing, possessing, or using security threat group or unauthorized organizational insignia or materials; or giving security threat group or unauthorized organizational signs." 20 Ill. Adm. Code 504 app. A (2011).

Plaintiff contends this rule was unfairly applied to him on the basis of his race. In order to state such a claim, plaintiff must allege facts showing he was similarly situated to a comparison group.

¶ 44 Although plaintiff alleged groups of white and Hispanic prisoners were not asked for identification or taken to segregation during the December 1, 2012, incident, plaintiff has failed to allege additional facts showing he was similarly situated with respect to the other

groups of prisoners. For example, plaintiff does not allege the white or Hispanic inmates were affiliated with a "security threat group" or "unauthorized organization" (*e.g.*, gangs). Nor does plaintiff allege the white or Hispanic groups were engaged in, or pressured others to engage in, the unauthorized activities. If the white and Hispanic groups were not engaged in such activities, then the "different treatment of unlike groups does not support an equal protection claim." *Derrico G.*, 2014 IL 114463, ¶ 92, 15 N.E.3d 457. Plaintiff has failed to adequately plead sufficient facts to show he was similarly situated to the comparison group (the white and Hispanic inmates who were not placed in segregation for investigation under Rule 205). Accordingly, we conclude the trial court properly granted defendants' motion to dismiss for failure to state a claim.

¶ 45 We acknowledge plaintiff alleges, in his reply brief on appeal, the white and Hispanic inmates were affiliated with gangs and, as such, he was singled out unfairly based on his race. However, these pertinent facts were not included in his second amended complaint before the trial court and were for the first time before this court, even though defendants challenged the sufficiency of plaintiff's pleadings on this point before the trial court. We decline to consider these factual allegations raised in plaintiff's reply brief, as our review is limited to the face of plaintiff's complaint. *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 56, 978 N.E.2d 1020 ("The standard of review on a section 2-615 motion to dismiss clearly limits our review to the face of the complaint.").

¶ 46 D. Access to the Courts

¶ 47 Plaintiff argues the trial court "erred by not admonishing plaintiff that he could amend his claim of denial of access to provide proof of actual injury." Plaintiff cites no authority to support the contention the court had a duty to so admonish him. *Pro se* litigants are presumed

to have knowledge of court rules and procedures, and " 'a court will not apply a more lenient standard to *pro se* litigants.' " *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78, 987 N.E.2d 1 (quoting *People v. Fowler*, 222 Ill. App. 3d 157, 163, 583 N.E.2d 686, (1991)). Thus, it is presumed plaintiff had knowledge of the necessary steps to amend his complaint. Moreover, plaintiff had previously amended his complaint twice, indicating his actual knowledge of the necessary steps. Accordingly, we conclude the court did not err in not admonishing plaintiff regarding his claim of denial of access to the courts.

¶ 48 Insofar as plaintiff asserts he was denied access to the courts, we conclude he has failed to state a claim. In *Bounds v. Smith*, 430 U.S. 817, 828 (1977), the Supreme Court held, "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." However, the Supreme Court has held the scope of the access to courts contemplated in *Bounds* is not limitless. In *Lewis v. Casey*, 518 U.S. 343, 355 (1996), the Supreme Court held as follows:

"*Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." (Emphasis in original.)

Additionally, "no constitutional right is implicated absent a showing of an actual injury to an existing or contemplated litigation that raises nonfrivolous claims." *Turner-El*, 349 Ill. App. 3d at 484, 811 N.E.2d at 736.

¶ 49 Plaintiff claims Olson denied him access to the courts by denying him the legal materials he requested. Plaintiff alleges the existence of a letter making Olson aware of his dismissed court of claims case and his need for information in order to appeal that dismissal. Plaintiff further made a number of allegations involving the grievances he filed. As plaintiff has clearly had access to the courts to raise his various constitutional claims related to those grievances, the only matter in which he has arguably been denied access to the courts is his court of claims case. However, plaintiff failed to allege any facts to show his court of claims case involved an attack on his sentence or a challenge of the conditions of his confinement. *Lewis*, 518 U.S. at 355. Accordingly, plaintiff has failed to allege the impairment was anything other than an incidental consequence of incarceration. *Id.* Thus, we conclude the court properly dismissed this claim under section 2-615 of the Code.

¶ 50 E. Retaliation

¶ 51 "[T]o prove a *prima facie* case of retaliation for exercising a first amendment right, plaintiff has to prove that (1) he engaged in an activity protected by the first amendment, (2) he suffered a deprivation likely to deter similar first amendment activity in the future, and (3) his protected activity was at least a motivating factor in defendants' decisions to take the retaliatory actions." *Fillmore v. Walker*, 2013 IL App (4th) 120533, ¶ 37, 991 N.E.2d 340.

¶ 52 Plaintiff argues in his brief Olson retaliated against him by denying him access to the courts. This argument is redundant, and we decline to address the duplicative issues regarding plaintiff's access to the courts for a second time. Insofar as plaintiff claims Olson's

actions were in retaliation for plaintiff's exercise of his first amendment rights, we conclude plaintiff failed to allege any facts whatsoever that support the conclusion Olson was motivated to act by plaintiff's grievances. The complaint alleged he wrote a letter to Olson on November 29, 2012, and filed grievances on December 17, 2012, and December 26, 2012. No factual allegations in the complaint show any action taken by Olson was motivated by these grievances, nor does plaintiff allege Olson knew of these grievances during the time he had no access to his legal boxes. We note the complaint alleged plaintiff gained access to his legal boxes after January 21, 2013, when he was released from segregation. With respect to the December 17, 2012, grievance, the complaint alleges Goins sent the grievance to Cowick on January 3, 2013, and Cowick responded on January 9, 2013. The complaint further alleges Goins reported on April 23, 2013, that plaintiff "may send a request to the librarian in order to go through his excess legal boxes." With respect to the December 26, 2012, grievance, the complaint alleges Cowick responded to the grievance on February 12, 2013, and stated Olson had been contacted regarding the grievance. There are no allegations as to when Olson became aware of the grievances or that her knowledge of the grievances caused her to retaliate against plaintiff by denying him access to his legal boxes. Accordingly, we conclude plaintiff failed to allege sufficient facts to state a claim against Olson for retaliation.

¶ 53 With respect to plaintiff's claim Jennings retaliated against him for exercising his first amendment rights, we conclude the trial court properly dismissed this claim. Plaintiff's complaint alleges he sent Jennings a letter making him aware of the December 17, 2012, grievance and, as a result, Jennings subjected plaintiff to a drug test. The complaint does *not* assert the drug test was a retaliatory act. Following the drug test, plaintiff asked if he was being released from segregation, and Jennings allegedly responded in the negative and stated, "I can't

get you for [security threat group], but I'll be serving you a ticket for something real soon, I just got to make sure you don't come from under it." Plaintiff alleges this prompted him to file a second grievance. The complaint also includes a paragraph alleging Jennings used "false and inculpatory evidence against the plaintiff insofar as with the offense of 205, with no evidence to support the charge, and contributed to and proximately caused the above described violation of the first amendment, which prohibits harassment and retaliation."

¶ 54 Presumably, plaintiff thinks this timeline somehow shows Jennings retaliated against him by filing the "false and inculpatory" disciplinary report. However, there are no allegations that plaintiff's grievances motivated Jennings to file the December 29, 2012, disciplinary report. Jennings was assigned to investigate the December 1, 2012, incident in the yard, and it is, therefore, unsurprising he eventually filed a disciplinary report. As defendants point out in their brief, the allegation that Jennings was "aware of" the grievances and letters plaintiff sent to prison officials and others is conclusory and unsupported by any other factual allegations that knowledge of the grievances or letters motivated Jennings to retaliate against plaintiff. We conclude the court properly dismissed plaintiff's claims of retaliation for exercising first amendment rights for failure to state a claim.

¶ 55 F. Due Process

¶ 56 Finally, plaintiff contends defendants violated his due-process rights because (1) he was not accused of a chargeable offense, in violation of section 504.20 of Title 20 of the Administrative Code (20 Ill. Adm. Code 504.20 (2011)); (2) the adjustment committee failed to provide an adequate basis for finding plaintiff guilty; and (3) his conviction was unsupported by any evidence.

¶ 57 Plaintiff does not assert a violation of his due-process rights at all in his complaint. Rather, count II, entitled "Denied a Fair Procedures And/Or Disciplinary Decision," asserts prison officials refused to further investigate plaintiff's grievances challenging the alleged "unwritten segregation policy" in treating black prisoners [differently from] white (and any other) prisoners." The complaint, in pertinent part, requests orders directing (1) Williams to expunge the disciplinary conviction; (2) Godinez to reopen an investigation as to the retaliation grievances; and (3) McCarty, Greer, and Goins to refer his grievances for further investigation. Plaintiff contends he has a right to relief based on the various DOC regulations and procedures for handling grievances and disciplinary proceedings. The essence of plaintiff's claim is defendants did not consider sufficient evidence to fairly adjudicate his grievances. "Because the administrative review board's decision of what evidence to consider is wholly discretionary, it cannot be challenged through a *mandamus* petition." *Dye v. Pierce*, 369 Ill. App. 3d 683, 688, 868 N.E.2d 293, 297 (2006).

¶ 58 Although plaintiff contends the regulations give him a right to *mandamus* relief, "[p]rison regulations *** were *never* intended to confer rights on inmate[s]." (Emphasis in original.) *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258, 739 N.E.2d 897, 902 (2000). Inmates have the right to (1) adequate shelter, food, drinking water, clothing, sanitation, medical care, and personal safety; (2) reasonable access to the courts; and (3) a reasonable opportunity to exercise religious freedom. *Id.* at 1258-59, 739 N.E.2d at 903. "Beyond these, prisoners possess no other rights, only privileges." *Id.* Plaintiff has failed to set forth sufficient facts to show any clear right to relief based on the DOC regulations regarding the handling of grievance procedures or disciplinary procedures.

¶ 59

III. CONCLUSION

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

¶ 61 Affirmed.