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2017 IL App (4th) 160221-U

NO. 4-16-0221

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 5, 2017

Carla Bender

4th District Appellate
Court, IL

RAMONE R. McGOWAN,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
HILL CORRECTIONAL CENTER ADJUSTMENT)	No. 15MR289
COMMITTEE; WARDEN KEVWE AKPORE; and)	
DEPARTMENT OF CORRECTIONS)	Honorable
ADMINISTRATIVE REVIEW BOARD,)	Brian T. Otwell,
Defendants-Appellees.)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed plaintiff's complaint for *certiorari* review of prison disciplinary proceedings as the complaint he filed and its attachments show he received due process.

¶ 2 Plaintiff, Ramone R. McGowan, an inmate in the Illinois Department of Corrections (DOC), appeals from the trial court's dismissal of his complaint seeking *certiorari* review of prison disciplinary proceedings. Plaintiff alleges defendants, the Hill Correctional Center Adjustment Committee (Adjustment Committee), Warden Kevwe Akpore, and the DOC Administrative Review Board (Board), denied him due process. We affirm.

¶ 3 I. BACKGROUND

¶ 4 According to DOC's website, plaintiff is currently at Western Illinois Correctional Center, serving a 75-year sentence on his conviction for murder and attempt (armed robbery). He is projected to be released from prison on December 30, 2030.

¶ 5 On June 26, 2014, while an inmate at Hill Correctional Center (Hill), plaintiff was served with a disciplinary report alleging he violated a DOC rule prohibiting engaging in "security threat group or unauthorized organizational activity," pursuant to Rule 504.205 of the Illinois Administrative Code (20 Ill. Adm. Code 504, App A. R205, added at 27 Ill. Reg. 6214 (eff. May 1, 2003)). Plaintiff waived the 24-hour notice requirement prior to the disciplinary hearing, which was held an hour later.

¶ 6 According to the disciplinary report, plaintiff admitted he was an "Akbar" for the "Black P. Stones STG" (Stones). The report also included statements from four confidential informants.

¶ 7 Confidential informant No. 1 stated plaintiff was "an Akbar with the Stones," and he had the Stones' gang members in the R2 cell block on high alert after a fight in the cell block on June 7, 2014. The informant stated plaintiff had created rules for the Stones' members in the cell block, including requiring each member to have security when they went to shower, use a phone, get into a meal line, use the day room, or go into the yard.

¶ 8 Confidential informant No. 2 stated plaintiff had the Stones' members on the R2B wing organized, and he had 10 soldiers on the wing who acted as though they ran the deck. According to this informant, the Stones bullied nonaffiliated inmates on that wing by dictating when they could take showers or use the phone.

¶ 9 Confidential informant No. 3 stated plaintiff had issued an ultimatum to the prison's Vice Lords gang, stating, "If you want to finish this, we can do it right now." This was a reference to the June 7, 2014, fight between members of the gangs. Vice Lords members had stated they considered the matter to be over, but plaintiff kept bringing it up.

¶ 10 Confidential informant No. 4 stated the Stones were "on some militant stuff"

because of the June 7, 2014, fight.

¶ 11 The report concluded the confidential informants' statements clearly showed plaintiff was an active member of the Stones and had organized the Stones' affiliated members in R2. The report further concluded the statements and actions of plaintiff showed he was in violation of Rule 504.205 of the Administrative Code. The confidential informants were deemed reliable because "their statements corroborate each other's even though they were interviewed at separate times and have no knowledge of each other's statements given." The confidential informants had also provided true and accurate information in the past. The identities of the confidential informants were withheld for their safety and the safety and security of the institution.

¶ 12 Following the hearing, the Adjustment Committee issued a final summary report noting plaintiff pleaded not guilty, denied admitting he was an Akbar for the Stones, and took issue with the allegations in the disciplinary report. The Adjustment Committee found plaintiff guilty of the charged offense based on the following: (1) the internal affairs investigator conducted interviews and obtained information substantiating the charge against plaintiff, (2) plaintiff admitted he was an Akbar for the Stones, and (3) the above-cited statements from the four confidential informants showed plaintiff was an active leader of the Stones and had organized members thereof in the R2 cell block. The Adjustment Committee found the confidential informants reliable because their statements corroborated one another even though they were interviewed at separate times, did not know about each other's statements, and had provided true and accurate information in the past. The identities of the confidential informants were withheld for their safety and the safety and security of the institution. Sanctions included demotion to C-grade, one year of disciplinary segregation, loss of one year of good-conduct

credit, disciplinary transfer, and six months of no-contact visits.

¶ 13 According to a February 2015 letter from the Board, plaintiff filed grievances on July 14, 2014, and July 21, 2014, related to the June 2014 disciplinary proceedings. (The grievances are not a part of the record; however it appears plaintiff unsuccessfully attempted to get copies of the grievances after the ruling.) The Board denied plaintiff's request to review Hill's resolution of his grievances.

¶ 14 In March 2015, plaintiff filed a *pro se* complaint for common law writ of *certiorari* against the Adjustment Committee, Akpore, and the Board. Plaintiff alleged the disciplinary proceedings violated his due process rights because (1) he was not given adequate notice of the charge against him where the disciplinary ticket did not specify a time or place of the alleged misconduct, (2) there was a lack of "some evidence" supporting the Adjustment Committee's finding of guilt, and (3) the confidential sources were not properly assessed as reliable.

¶ 15 In June 2015, defendants filed a motion to dismiss and supporting memorandum of law pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2014)). Defendants argued (1) the disciplinary report and Adjustment Committee summary report attached to plaintiff's complaint plainly refuted his due process allegations, rendering them unmeritorious; (2) plaintiff failed to plead any facts showing how Akpore or the Board contributed to the alleged due process violations; and (3) the Adjustment Committee could not be sued because it was not a separate legal entity.

¶ 16 In June 2015, plaintiff filed a response to the motion to dismiss and a motion to amend his complaint to name individual Adjustment Committee members as defendants.

¶ 17 After a March 3, 2016, telephone hearing, the trial court found the Adjustment

Committee and the Board were not proper defendants and dismissed them from the action. The court granted the motion to dismiss, concluding (1) the offense was alleged sufficiently even though dates were not specified because it was ongoing and associational in nature; (2) the Adjustment Committee's summary report contained sufficient findings to satisfy due process; and (3) to the extent the court could consider the reliability of the confidential sources, no due process violation occurred based on the Adjustment Committee's reliability finding. The court did not rule on plaintiff's motion to amend the complaint.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Initially, we note plaintiff's *pro se* brief fails to adhere to Illinois Supreme Court Rule 341(h) (eff. Jan. 1, 2016), which pertains to appellate briefs. The brief does not contain a statement of facts which references pages in the record. The argument makes reference to only two of the cases listed in the statement of authorities and does not cite the pages of the record on which he relied.

¶ 21 "The purpose of the [supreme court] rules is to require parties to proceedings before a reviewing court to present clear and orderly arguments so that the court may properly ascertain and dispose of the issues involved. [Citation.] Where an appellant's brief fails to comply with the rules, this court has inherent authority to dismiss the appeal for noncompliance with its rules.' [Citation.]" *La Grange Memorial Hospital v. St. Paul Insurance Co.*, 317 Ill. App. 3d 863, 876, 740 N.E.2d 21, 32 (2000) (quoting *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095, 618 N.E.2d 771, 776 (1993)).

¶ 22 As stated, plaintiff's brief does not conform to Rule 341(h). However, we may still consider the appeal despite plaintiff's failure to file a sufficient brief, "so long as we

understand the issue plaintiff intends to raise and especially where the court has the benefit of a cogent brief of the other party." *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511, 748 N.E.2d 222, 226 (2001). Despite plaintiff's failure to comply with Rule 341(h), considering the Attorney General's clear and cogent brief on defendants' behalf, we will consider the appeal.

¶ 23 The dismissal of plaintiff's complaint for common law writ of *certiorari* is at issue here. Specifically, plaintiff argues he was denied due process during the course of the disciplinary proceedings because (1) he did not receive adequate notice of the charge against him, (2) insufficient evidence was presented to prove him guilty of the charged offense, and (3) the Adjustment Committee's summary report was insufficient to satisfy the requirement it contain a detailed summary of the evidence relied upon in reaching its decision. Further, he argues the trial court erred when it ruled the Adjustment Committee and Board were improper defendants, failed to allow plaintiff to amend his complaint, and exceeded its authority by deciding the merits of his claims rather than simply deciding if he had "legal precedent to sue and had raised an arguable legal complaint." Plaintiff avers it was for a jury to decide the merits of his claims after he was allowed discovery and the right to examine witnesses. Defendants argue plaintiff (1) was afforded his due process rights and (2) forfeited any issue relating to his motion for leave to amend his complaint because he did not obtain a ruling on the motion in the trial court. We affirm.

¶ 24 "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 to 3-113 (West 2014))] 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. "[C]ourts 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. Since the statutes regarding prison disciplinary procedures (see 730 ILCS 5/3-8-7 to 3-8-10 (West 2014)) neither adopt the Administrative Review Law nor provide another method of judicial review of disciplinary procedures, *certiorari* review of prison discipline in the circuit court is appropriate. *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253, 748 N.E.2d 285, 290 (2001).

¶ 25 To successfully claim a due process violation, a plaintiff must show a deprivation of life, liberty, or a 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, but confinement in disciplinary segregation for a limited period of time fails to deprive an inmate of a cognizable liberty interest. *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1116, 942 N.E.2d 758, 763 (2011). Here, the sanctions imposed included the loss of one year of good-time credit.

¶ 26 As determined in *Beacham v. Walker*, 231 Ill. 2d 51, 57-58, 896 N.E.2d 327, 331 (2008):

"A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. [Citations.] We review *de novo* an order granting or denying a section 2-615

motion [citations], accepting as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts [citations]. We construe the allegations in the complaint in the light most favorable to the plaintiff. [Citations.] Given these standards, a cause of action should not be dismissed, pursuant to a section 2-615 motion, unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. [Citations.] However, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action. [Citation.]"

¶ 27 Illinois is a fact-pleading jurisdiction in which the plaintiff must allege specific facts to bring the complaint's allegations within a recognized cause of action. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499, 911 N.E.2d 369, 373 (2009). "The court must consider '[a]ll facts apparent from the face of the pleadings, including the exhibits attached thereto.'" *Oliver v. Pierce*, 2012 IL App (4th) 110005, ¶ 11, 964 N.E.2d 666. 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. *Bajwa v. Metropolitan Life Insurance Co.*, 208 Ill. 2d 414, 431-32, 804 N.E.2d 519, 531 (2004). "To survive a motion to dismiss for the failure to state a cause of action, a complaint must be both legally and factually sufficient." *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 434, 876 N.E.2d 659, 664 (2007).

¶ 28 Here, plaintiff's due process claims were based on alleged insufficiencies in the disciplinary report and the Adjustment Committee summary, copies of which were attached as

exhibits to plaintiff's complaint. Although plaintiff alleged he was not provided adequate notice of the charge against him in the disciplinary report, did not receive an adequate summary of the evidence the Adjustment Committee relied upon in its summary report, and the evidence contained in the report was not sufficient to find he violated the DOC rule, the exhibits attached to the complaint show otherwise.

¶ 29 The full array of rights due 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 the following: (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. *Id.* 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, 455 (1985).

¶ 30 A. Notice of the Charge

¶ 31 First, plaintiff argues he was not given adequate notice of the charge against him because it did not contain specific dates, times, and places regarding the alleged violation of the rule as required under *Wolff* (see *Wolff*, 418 U.S. at 564 (inmate has a right to notice informing him of disciplinary charges and enable him to prepare a defense)). "The notice should inform the inmate of the rule allegedly violated and summarize the facts underlying the charge." *Northern v. Hanks*, 326 F.3d 909, 910 (7th Cir. 2003) (*per curiam*) (citing *Whitford v. Boglino*, 63 F.3d 527, 534 (7th Cir. 1995) (*per curiam*)).

¶ 32 Here, plaintiff was put on notice he was being charged with violating Rule

504.205, which prohibits the following:

"Engaging, pressuring, or authorizing others to engage 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. R205, added at 27 Ill. Reg. 6214 (eff. May 1, 2003).

¶ 33 The June 26, 2014, disciplinary report served on plaintiff summarized statements by four confidential sources regarding plaintiff's involvement and position in the Stones gang. It referenced a fight in the cell block on June 7, 2014, between the Stones and the Vice Lords and rules plaintiff was imposing on other Stones gang members and ultimatums to Vice Lords members after the June 7, 2014, fight. As the trial court noted, the rule violation was "ongoing and associational," thereby not requiring inclusion of specific dates. The information contained in the disciplinary report put plaintiff on notice of the charges against him and provided adequate information for him to prepare a defense. Therefore, plaintiff was not denied due process.

¶ 34 B. Evidence of Guilt

¶ 35 Next, plaintiff argues the evidence presented was insufficient to prove him guilty of the charged offense. Due process requirements regarding the sufficiency of evidence in a prison disciplinary setting are minimal. To find an inmate guilty of a charged offense, the Adjustment Committee "must be reasonably satisfied there is some evidence that the offender committed the offense." 20 Ill. Adm. Code 504.80(j)(1), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003); *Walpole*, 472 U.S. at 455 (due process requires only that the prison disciplinary

decision be supported by "some evidence"). A disciplinary report alone provides " 'some evidence' " for the disciplinary decision where the report describes the incident in sufficient detail. *McPherson v. McBride*, 188 F.3d 784, 786 (7th Cir. 1999). Further, prison disciplinary authorities may rely on statements by confidential informants, as long as there is some indication the statements are reliable. *Mendoza v. Miller*, 779 F.2d 1287, 1293 (7th Cir. 1985).

¶ 36 In the case *sub judice*, the disciplinary report reflected a substantial amount of information which established plaintiff had violated the rule against security threat group or unauthorized organization activity. The report indicated plaintiff was acting as a street gang leader for the Stones on the R2 cell block. Confidential informants, who were determined to be reliable sources of information, reported plaintiff had created rules for other Stones members on the R2 cell block, had 10 soldiers who bullied nonaffiliated inmates on the cell block and dictated when they could take showers or use the phone, and issued ultimatums to the Vice Lords gang after a fight between the two gangs in June 2014. In addition, the confidential informants' statements corroborated one another even though the statements were made at different times, outside the presence of the other informants, and the informants had given reliable information in the past. Therefore, the record clearly shows "some evidence" of plaintiff's guilt. *Walpole*, 472 U.S. at 454-55.

¶ 37 C. The Adjustment Committee Summary Report

¶ 38 Next, plaintiff argues the summary report from the Adjustment Committee did not meet due process requirements because it largely reiterated the evidence set forth in the disciplinary ticket. Due process requires an inmate to receive a written summary by the fact finder setting forth the evidence relied upon and the reasons for the disciplinary action. *Wolff*, 418 U.S. at 565. "[T]o satisfy minimum due process requirements, a statement of reasons should

be sufficient to enable a reviewing body to determine whether good-time credit has been revoked for an impermissible reason or for no reason at all. While detailed findings are not required, something beyond mere conclusory statements is required." (Emphases omitted.) *Thompson v. Lane*, 194 Ill. App. 3d 855, 864, 551 N.E.2d 731, 737 (1990).

¶ 39 Here, unlike in *Thompson*, the Adjustment Committee did more than simply refer to the disciplinary ticket in stating the reasons for its decision. The report reflected plaintiff's testimony and the specific contents of the disciplinary ticket on which it relied for its decision, *i.e.*, the confidential informants' statements. Therefore, the Adjustment Committee's stated reasons for its decision were sufficient to enable "a reviewing body to determine whether good-time credit has been revoked for an impermissible reason or for no reason at all" (*id.*) and satisfied the minimum requirements of due process. Thus, the record does not support plaintiff's allegation he was denied due process because the Adjustment Committee's findings were not sufficiently detailed.

¶ 40 D. The Motion for Leave To Amend

¶ 41 Plaintiff asserts the trial court should have granted his motion for leave to amend his complaint so he could substitute individual Adjustment Committee members as defendants in place of the Adjustment Committee itself. Defendants maintain plaintiff has forfeited this issue because he failed to seek a ruling from the trial court on the motion. In the alternative, defendants argue, even if the substitution had been allowed, it would not have cured the substantive defect in the complaint.

¶ 42 "[A] movant has the responsibility to obtain a ruling on his motion if he is to avoid forfeiture on appeal." *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 41, 981 N.E.2d 981. We note the record reflects plaintiff filed a request for hearing on January 1, 2016, which listed only

defendants' motion to dismiss and his reply thereto. Subsequent notices from the trial court and defense counsel setting the matter for telephone hearing did list plaintiff's motion to amend. However, the record is devoid of any indication plaintiff sought a ruling on his motion for leave to amend. Therefore, he has forfeited this issue on appeal.

¶ 43 We agree with defendants, even if this issue had not been forfeited, amending the *certiorari* complaint to substitute individual members of the Adjustment Committee would not cure the defects in his case. See *Joseph Construction Co. v. Board of Trustees of Governors State University*, 2012 IL App (3d) 110379, ¶¶ 55-57, 973 N.E.2d 486. Amending the complaint in the fashion plaintiff requested would not change the fact he was afforded due process in the disciplinary action.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment dismissing plaintiff's complaint for *certiorari* review.

¶ 46 Affirmed.