

¶ 3 Plaintiff appeals, arguing the circuit court erred by denying his motion for summary judgment and granting defendant’s motion for summary judgment. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Underlying Incident and Investigation

¶ 6 In November 2015, the warden at Dixon—the correctional facility housing plaintiff at the time—began an internal investigation based on a complaint from outside the prison showing that plaintiff contacted widowed citizens seeking to defraud them into sending him money. Information in the complaint revealed that plaintiff obtained the names of recently widowed citizens (including the complainant’s mother) from probate notices in local newspapers, contacted them, and tried to befriend them. The complaint led investigators to a blog containing numerous civilian complaints concerning plaintiff trying to extort recently widowed citizens.

¶ 7 On November 30, 2015, Lieutenant Dan Newman interviewed plaintiff regarding the matter. Plaintiff stated that he entered into an agreement in 2009 with Oran Nail—who died in 2010—to draw two portraits and give one piece of jewelry to Oran in exchange for \$1000. Plaintiff could not provide specifics about the portraits, jewelry, or arrangements. Plaintiff stated that he filed an action in probate court concerning this claim. In a follow-up interview two weeks later, plaintiff stated that, sometime in 2014, he entered into an agreement with Irma Nail, Oran’s now-deceased wife, to draw portraits in exchange for \$1000.

¶ 8 On December 17, 2015, correctional officers placed plaintiff on investigative status and put him in segregation pending conclusion of the investigation. A search of plaintiff’s property revealed that plaintiff had obtained names of heirs or personal representatives from

property, the internet blog, and the documented civilian complaint, officials determined plaintiff obtained names of heirs or personal representatives from newspaper obituaries. Then, plaintiff filed Freedom of Information Act (FOIA) requests to obtain additional information to use to victimize the estate of the deceased by alleging the deceased owed money to plaintiff for various services rendered.

¶ 13 On the disciplinary report form, in an area immediately above the line for the offender's signature, a sentence informed plaintiff of his right to a hearing conducted by the DOC adjustment committee. The report also informed plaintiff of his right to present witnesses at the hearing with the following conditions:

“You may ask that witnesses be interviewed and, if necessary and relevant, they may be called to testify during your hearing. You may ask that witnesses be questioned along the lines you suggest. You must indicate in advance of the hearing the witnesses you wish to have interviewed and specify what they could testify to by filling out the appropriate space on this form, tearing it off, and returning it to the Adjustment Committee. You may have staff assistance if you are unable to prepare a defense. You may request a reasonable extension of time to prepare for your hearing.”

The form had a dotted line, below which it stated “(Detach and Return to the Adjustment Committee or Program Unit Prior to the Hearing).” An inmate must fill in his name, the name of the witness, and an explanation of what the witness would testify to at a hearing.

¶ 14 Plaintiff did not sign the form to acknowledge his receipt. Plaintiff wrote the name of seven witnesses he wished to testify at the hearing. However, plaintiff did not state

what testimony these witnesses would provide. Plaintiff also did not detach the form and return it to the adjustment committee.

¶ 15 C. Adjustment Committee Hearing and Summary Report

¶ 16 On February 16, 2016, the adjustment committee held a hearing on plaintiff's disciplinary report. Plaintiff submitted a written response to his disciplinary report stating he was not guilty and provided a list of witnesses. Plaintiff asserted there was insufficient evidence to prove any of the seven charges.

¶ 17 After the hearing, the adjustment committee submitted a final summary report, finding plaintiff committed the seven offenses. The adjustment committee disciplined plaintiff with one-year C-Grade status, one-year segregation, revocation of six months' good-conduct credit, and a disciplinary transfer.

¶ 18 As the basis for its decision, the adjustment committee stated Lieutenant Newman provided an investigative report detailing plaintiff's admitted business venture and his inconsistent statements. The adjustment committee also cited the newspaper obituaries and documents in plaintiff's possession, which showed he did contact heirs and personal representatives claiming that a number of deceased individuals owed him money.

¶ 19 D. Proceedings in the Circuit Court

¶ 20 On August 1, 2016, plaintiff filed a *pro se* petition for a common law writ of *certiorari* asking the court to find defendant violated his due process rights by failing to call his witnesses at his disciplinary hearing and by failing to provide detailed and supported reasons for his discipline. Plaintiff sought expungement of the disciplinary action and \$500. Defendant filed the administrative record and an amended brief in response to plaintiff's petition. Raphael Chavez—the adjustment committee chairperson for plaintiff's hearing—certified the record as a

true and accurate copy of the documents considered in the adjustment committee’s decision to discipline plaintiff.

¶ 21 On March 6, 2017, plaintiff filed a motion for summary judgment and defendant filed a cross-motion for summary judgment. In June 2017, the circuit court granted defendant’s motion for summary judgment and denied plaintiff’s motion for summary judgment. Specifically, the court found the evidence supported the adjustment committee’s decision.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, plaintiff asserts the circuit court erred by denying his motion for summary judgment and granting defendant’s motion for summary judgment. While plaintiff advances six arguments on appeal, in the circuit court plaintiff argued only a single issue—a violation of his due process rights. Therefore, we review only his due process claim. See *1010 Lake Shore Ass’n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14, 43 N.E.3d 1005 (issues not raised in the circuit court are deemed forfeited). To the extent plaintiff argues a genuine issue of material fact precluded the circuit court from granting defendant’s cross-motion for summary judgment, we conclude plaintiff may not take this inconsistent position on appeal after moving for summary judgment in the circuit court. See *In re Stephen K*, 373 Ill. App. 3d 7, 25, 867 N.E.2d 81, 98 (2007) (“A party is estopped from taking a position on appeal that is inconsistent with a position the party took in the trial court.”).

¶ 25 A. Plaintiff’s Brief

¶ 26 Defendant argues plaintiff’s brief violates Illinois Supreme Court Rule 341(h)(6) (7) (eff. May 25, 2018) by failing to present sufficient facts or develop any cogent arguments in support of his claims in his opening brief. Therefore, this court “may not only strike portions of

the brief or consider arguments waived, but strike a brief in its entirety and dismiss the matter.” *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 6, 960 N.E.2d 1226. Defendant contends a *pro se* party must comply with the same rules and procedures as licensed attorneys. *People v. Richardson*, 2011 IL App (4th) 100358, ¶ 12, 961 N.E.2d 923.

¶ 27 “Where violations of supreme court rules are not so flagrant as to hinder or preclude review, the striking of a brief in whole or in part may be unwarranted.” *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 527, 691 N.E.2d 191, 197 (1997).

Because plaintiff’s opening brief includes citations to the record, generally asserts arguments with some citations, and includes a brief statement of the facts, we find any violations are not so flagrant as to preclude review. Therefore, we decline to strike plaintiff’s brief.

¶ 28 B. Writ of *Certiorari*

¶ 29 In the circuit court, plaintiff filed a common law writ of *certiorari* asking the court to find defendant violated his due process rights by failing to (1) call his witnesses at his disciplinary hearing and (2) provide detailed and supported reasons for his discipline.

Defendant responded with an amended brief in support of the adjustment committee’s decision and the accompanying record. Rather than following typical procedures for *certiorari* review of a prison disciplinary hearing, plaintiff moved for summary judgment and defendant responded by filing a cross-motion for summary judgment. Although, the circuit court granted defendant’s motion for summary judgment, we conclude the principles that govern an action for common-law writ of *certiorari* are the appropriate method for reviewing the adjustment committee’s decision. See *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, ¶ 40, 8 N.E.3d 1083 (review matter under proper method, even when wrongly presented in the circuit court).

¶ 30 “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 *et seq.* West 2016))] and provides for no other form of review.” *Hanrahan v. Williams*, 174 Ill. 2d 268, 272, 673 N.E.2d 251, 253 (1996). The statutory provisions pertaining to prison disciplinary proceedings do not adopt the Administrative Review Law nor provide another method of judicial review. *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253, 748 N.E.2d 285, 290 (2001). Thus, prison disciplinary proceedings are reviewable in an action for *certiorari*. *Id.*

¶ 31 C. Standard of Review

¶ 32 “The standards of review under a common law writ of *certiorari* are essentially the same as those under the Administrative Review Law.” *Hanrahan*, 174 Ill. 2d at 272. “Under the Administrative Review Law, 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].” *Id.* at 273-74. Review is limited to consideration of the actions of the administrative body. *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 427-28, 551 N.E.2d 640, 645-46 (1990). “If the record contains evidence to support the agency’s decision, it should be affirmed.” *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88-89, 606 N.E.2d 1111, 1117 (1992).

¶ 33 D. Due Process

¶ 34 In this instance, we examine whether the record of the disciplinary proceedings defeats plaintiff’s petition for *certiorari* relief. In *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Supreme Court outlined the due process rights afforded to inmates. Inmates are entitled to (1) notice of disciplinary charges at least 24 hours prior to disciplinary proceedings; (2) the

opportunity to call witnesses and present evidence in their defense, when consistent with institutional safety and correctional goals; and (3) a written statement by the disciplinary committee outlining the evidence relied upon in reaching its decision. *Id.* at 563-66.

¶ 35 *1. Opportunity to Call Witnesses*

¶ 36 The right to call witnesses in a disciplinary proceeding is limited. *Baxter v. Palmigiano*, 425 U.S. 308, 321 (1976). Prison officials maintain necessary discretion to keep disciplinary hearings within reasonable limits and to refuse to permit the testimony of witnesses who may create a risk of reprisal, undermine authority, or provide irrelevant or cumulative and repetitive testimony. *Wolff*, 418 U.S. at 566. Under DOC rules, prior to the hearing, an inmate may request interviews of witnesses. 20 Ill. Adm. Code 504.80(f)(2) (eff. Apr. 1, 2017). A written request is required, and the inmate must use the space provided in the disciplinary report and include an explanation of the witnesses' anticipated statement. 20 Ill. Adm. Code 504.80(f)(2) (eff. Apr. 1, 2017). Alternatively, in the event of a failure to make a timely witness interview request, an offender may seek a continuance for good cause shown. 20 Ill. Adm. Code 504.80(f)(2) (eff. Apr. 1, 2017). The adjustment committee has the discretion to deny untimely requests and may accept or reject a request for witnesses where a request deviates from these rules, is cumulative, or is irrelevant. 20 Ill. Adm. Code 504.80(i)(3), (i)(4) (eff. Apr. 1, 2017).

¶ 37 Here, the adjustment committee properly exercised its discretion to deny the witness request under *Wolff* and DOC rules. The adjustment committee's final summary report stating, "No Witness Requested," evidenced that the adjustment committee did not receive a witness request from plaintiff prior to the hearing, as required by DOC rules. The record also supports the finding that the witness request slip on plaintiff's disciplinary report was not detached and returned prior to the hearing.

¶ 38 Plaintiff asserts that before and during his disciplinary hearing, he requested witnesses. However, he failed to show that he followed proper steps under DOC rules for requesting witnesses, sought a continuance, or demonstrated good cause. The adjustment committee had discretion to refuse to call any witnesses that plaintiff sought to testify because plaintiff did not properly request witnesses prior to his disciplinary hearing. See 20 Ill. Adm. Code 504.80(f)(2) (eff. Apr. 1, 2017).

¶ 39 Our case is analogous to *Newsome v. Illinois Prison Review Board*, 333 Ill. App. 3d 917, 921, 776 N.E.2d 325, 328-29 (2002), where the plaintiff failed to make a proper written request for three inmate witnesses he desired to be interviewed. This court found the adjustment committee properly exercised its discretion to deny the witness requests, given the plaintiff's failure to timely request the witnesses and identify their testimony. *Id.* Moreover, the court noted the adjustment committee had further discretion to decline to interview witnesses when their testimony would be cumulative. *Id.*

¶ 40 We find that even if for the sake of argument we view the adjustment committee's actions as failing to comport with due process, plaintiff fails to show prejudice. *Wolin v. Department of Financial and Professional Regulation*, 2012 IL App (1st) 112113, ¶ 25, 983 N.E.2d 23 ("A court will find a due process violation only if there is a showing of prejudice."). The evidence demonstrates that the potential witnesses testimony would have been (1) cumulative and repetitive of plaintiff's own testimony and statements, as well as the other witness statements, or (2) irrelevant, making the testimony unnecessary.

¶ 41 For instance, plaintiff claimed that after he entered into an agreement to provide portraits and jewelry to the Nails, he had his wife forward the portraits to Irma. When he did not receive payment, he filed a claim in probate court against the estate. Plaintiff wanted his wife to

testify to these same facts, namely that she received the portraits from plaintiff and forwarded them to Irma but did not receive payment. The testimony, however, would have been cumulative to plaintiff's testimony.

¶ 42 Also, plaintiff testified Sneed would testify that she entered into a valid settlement with him for \$500. However, Sneed informed Lieutenant Newman that she did not believe plaintiff but feared retaliation if she did not pay him, so she agreed to settle with him on the advice of her attorney. Accordingly, Sneed testifying at the hearing would have been repetitive, given she previously explained her actions and reasoning to Lieutenant Newman.

¶ 43 We find for the reasons stated above, the other witnesses' offered no support to plaintiff. Therefore, the exclusion of the potential witnesses' did not prejudice plaintiff. The adjustment committee reviewed the investigative report, including witness statements, plaintiff's inconsistent statements, and the documentary evidence. Ultimately, the committee concluded that plaintiff engaged in a scheme to defraud and extort widows from prison. Even if plaintiff had properly requested witnesses, no prejudice resulted from the adjustment committee's refusal to call witnesses at his hearing. Accordingly, we find the adjustment committee's decision did not violate plaintiff's due process rights when it declined to call certain witnesses.

¶ 44 *2. Written Statement*

¶ 45 Plaintiff is entitled to a written statement by the adjustment committee outlining the evidence relied upon in reaching its decision. "[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." (Internal quotation marks omitted.) *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1132, 815 N.E.2d 443, 453 (2004). Detailed findings are not required; however, the written

decision must contain more than a conclusory statement. *Id.* The written findings of the adjustment committee must be supported by “some evidence” in the record. *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 16, 966 N.E.2d 1233. Similarly, DOC rules require the adjustment committee to provide a written decision including “disposition of the charges, the disciplinary action recommended[,] and the reasons for recommending the disciplinary action.” 20 Ill. Adm. Code 504.80(m)(3) (eff. Apr. 1, 2017).

¶ 46 Here, plaintiff argues the adjustment committee’s final summary report failed to provide detailed and supported reasoning for his discipline. We disagree with plaintiff and find the adjustment committee provided a final summary report in line with the requirements of due process mandated in *Wolff* and in the DOC rules. Specifically, the final summary report stated the charges against plaintiff, detailed plaintiff’s actions, identified the evidence supporting its findings, and provided plaintiff’s punishment. The adjustment committee based its decision on Lieutenant Newman’s investigative report and the newspaper obituaries and documents found in plaintiff’s possession. Therefore, we find the adjustment committee’s decision met minimum due process requirements.

¶ 47 III. CONCLUSION

¶ 48 For the foregoing reasons, we affirm the circuit court’s judgment.

¶ 49 Affirmed.