NO. 4-10-0309 Order Filed 3/18/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JAMES E. RODGERS, Plaintiff-Appellant, v. ROGER E. WALKER, JR., Director, The Illinois Department of Corrections, Defendant-Appellee.	))))))))	Appeal from Circuit Court of Sangamon County No. 09MR473 Honorable John W. Belz Judge Presiding.

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

ORDER

Held: The trial court did not err in dismissing plaintiff's complaint for failure to state a claim where plaintiff failed to allege a violation of a protected liberty interest.

In February 2009, plaintiff, James E. Rogers, an inmate in the Illinois Department of Corrections (DOC), filed a *pro se* complaint for declaratory judgment, arguing defendant, Roger E. Walker, Jr., the former DOC Director, was violating his right to due process by continuing to classify him as an "Extremely High Escape Risk" (Level E), without affording him an opportunity to demonstrate the classification is no longer necessary. In February 2010, the trial court dismissed plaintiff's complaint for failure to state a claim and because it was barred by the doctrine of *laches*.

Plaintiff appeals *pro se*, arguing the trial court erred in dismissing his complaint where (1) he alleged sufficient facts to state a cause of action and (2) it was not barred by *laches* because the State did not allege prejudice as a result of his delay. We affirm.

II. BACKGROUND

According to plaintiff's complaint, he has been classified as a Level E inmate since 2000. In a grievance dated September 2, 2008, plaintiff alleged, *inter alia*, that as a result of his Level E classification, he has been (1) restricted to noncontact visitations, (2) limited in the number of visitations per month, (3) denied vocational and prison work assignments, and (4) subject to (a) weekly cell shakedowns, (b) cell relocations every 30 to 90 days, and (c) annual transfers among three maximum-security facilities.

In a September 24, 2008, letter, the administrative review board notified plaintiff (1) his grievance would be addressed without a formal hearing, (2) "Level E status is an administrative decision in order to ensure the safety and security of the institution," and (3) based on a total review of all available information, the issue had been appropriately addressed by the institutional administration. The letter concluded by recommending the denial of plaintiff's grievance.

On February 19, 2009, plaintiff filed a complaint for

declaratory relief. Count I of plaintiff's complaint alleged the following:

> "[Defendant's] failure to implement or maintain adequate procedures that provide the Plaintiff with an opportunity to present relevent [*sic*] information or evidence to demonstrate continued (Level E) classification is not necessary deprives the Plaintiff of minimal Due Process of Law in violation of the Illinois State Constitution, Article One, sections One and Two."

Plaintiff also stated that as a condition of his Level E classification, defendant continues to deprive him of State-created liberty interests. Specifically, count II of plaintiff's complaint contained the following allegations:

> "[Defendant's] conduct and actions as to [DOC] policies deprives or otherwise restricts the Plaintiff's State created liberty interests to contact visitation, prison vocational or work assignments and property interests in violation of his rights protected by Illinois State Constitution, Article One, sections One and Two; as well as State Law requirements."

On October 26, 2009, defendant filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2008)), arguing plaintiff is not entitled to any relief because it is well-established that all of the actions plaintiff complained of are not due-process violations. Specifically, defendant contends inmates have no due-process rights concerning their security classifications, work assignments, prison transfers, or contact visitations. Defendant also maintains plaintiff's claim was barred by *laches* because he had waited eight years to challenge his Level E classification.

On February 22, 2010, the trial court granted defendant's motion to dismiss, finding "none of [plaintiff's] allegations implicate due process" and *laches* also barred the action.

This appeal followed.

II. ANALYSIS

On appeal, plaintiff argues (1) the trial court erred in dismissing his complaint where he alleged sufficient facts to state a cause of action and (2) his complaint should not have been barred by *laches*.

A. Standard of Review

A motion to dismiss under section 2-615 of the Code tests the legal sufficiency of a plaintiff's claim. *Solaia Technology, LLC v. Speciality Publishing Co.*, 221 Ill. 2d 558, 578-79, 852 N.E.2d 825, 838 (2006). In reviewing a section 2-615

motion, the trial court takes as true all well-pleaded facts in the complaint and any reasonable inferences that may be drawn from it. However, the court will disregard mere conclusions of law or fact not supported by specific factual allegations. *White v. DaimlerChrysler Corp.*, 368 Ill. App. 3d 278, 282, 856 N.E.2d 542, 546 (2006). Although *pro se* pleadings are normally liberally construed, "a liberal construction will not be utilized to remedy the failure of a complaint to plead sufficient facts to establish a cause of action." *Turner-El v. West*, 349 Ill. App. 3d 475, 479, 811 N.E.2d 728, 733 (2004). We review *de novo* a dismissal under section 2-615. *Johnson v. Department of Corrections*, 368 Ill. App. 3d 147, 149-50, 857 N.E.2d 282, 284-85 (2006).

B. Failure To State a Claim

Plaintiff argues the restrictions placed on him as a result of his Level E classification impact liberty interests that are entitled to due-process protection. Plaintiff contends the deprivation of these rights, collectively, creates an impermissible hardship. We disagree.

An inmate does not have a protectible liberty interest in an initial security classification. See *Dennis E. v. O'Malley*, 256 Ill. App. 3d 334, 353, 628 N.E.2d 362, 375 (1993); see also *Wilkerson v. Stalder*, 329 F.3d 431, 435-36 (5th Cir. 2003). However, because plaintiff's complaint centers around a subse-

quent security classification, we examine whether he has a protectible liberty interest under *Sandin v. Conner*, 515 U.S. 472 (1995). See *Stalder*, 329 F.3d at 435-36.

In *Sandin*, the United States Supreme Court held disciplinary measures imposed on inmates, even if they involve removal of an entitlement granted by state statute or prison regulation, are not deprivations of liberty unless the state imposes atypical and significant hardship on an inmate in relation to the ordinary incidents of prison life. See *Sandin*, 515 U.S. at 484 (inmate liberty interests are limited to freedom from restrictive conditions of confinement that impose "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life").

Since *Sandin*, the United States Supreme Court has found one circumstance meeting its atypical-and-significant-hardship standard. In *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005), the Court concluded an inmate's assignment to Ohio's "supermax" prison imposed an atypical and significant hardship under the *Sandin* analysis. *Austin,* 545 U.S. at 224. The Court noted the harsh conditions in the supermax prison, including (1) the prohibition of almost all human contact, (2) the indefinite duration of confinement (with only an annual review of the placement), and (3) the fact that placement there disqualified an otherwise eligible inmate for parole consideration. *Austin*, 545

U.S. at 224.

However, plaintiff is not alleging due-process deprivations as a result of being assigned to a supermax-type prison. See *Taylor v. Frey*, No. 4-08-0210, slip op. at 7 (Ill. App. Jan. 24, 2011) (citing *Westefer v. Snyder*, 725 F. Supp. 2d 735, 740 (S. D. Ill. 2010) (holding a transfer into Tamms Correctional Center, a closed, maximum-security prison, requires due-process protection)). In this case, defendant has been annually transferred between Stateville, Pontiac, and Menard Correctional Centers, three level-one-maximum-security prisons. Moreover, plaintiff did not allege his classification resulted in the harsh conditions discussed in *Austin*. Instead, he cites such conditions as (1) the loss of his contact visits and the reduction in his permitted number of visitors per month from 20 to 10, (2) no opportunity to participate in prison work programs and vocational assignment, (3) cell relocations and shakedowns, and (4) the impact that yearly facility transfers have on his personal property. We cannot say these conditions are the kind of dramatic departures from normal prison life contemplated by *Austin*.

In addition, Illinois courts have previously considered and rejected similar claims. For example, in *Parker v. Snyder*, 352 Ill. App. 3d 886, 890, 817 N.E.2d 126, 129 (2004), this court found the plaintiff's due-process argument failed because (1) visitation restrictions on a Level E inmate did not involve a

fundamental constitutional right, (2) the rational-basis test applied, and (3) such restrictions were rationally related to safety and security concerns. We have also rejected an inmate's claim that he had a liberty interest in prison vocational programs. See *Ruiz v. Walker*, 386 Ill. App. 3d 1080, 1081-82, 900 N.E.2d 372, 375 (2008) (citing *Williams v. Thompson*, 111 Ill. App. 3d 145, 148-51, 443 N.E.2d 809, 810-12 (1982)); see also *Hadley v. Snyder*, 335 Ill. App. 3d 347, 354, 780 N.E.2d 316, 323 (2002) (an inmate "does not have a liberty or property interest in a prison job").

This court has also held inmates do not have protected liberty interests in avoiding transfers or involving housing assignments. See *Washington v. Walker*, 391 Ill. App. 3d 459, 465-66, 908 N.E.2d 1066, 1072 (2009) (citing *People v. Lego*, 212 Ill. App. 3d 6, 8, 570 N.E.2d 402, 404 (1991) ("[c]ourts are not to intervene in matters within the discretion of [DOC], including the location where inmates are assigned and housed")). We note plaintiff also complains of the differing rules at each facility and the impact of those rules on his personal property. However, the fact "'[t]hat life in one prison is much more disagreeable than in another does not in itself signify a Fourteenth Amendment liberty interest is implicated when a prisoner is transferred to the institution with the more severe rules.'" *Washington*, 391 Ill. App. 3d at 465, 908 N.E.2d at 1072 (quoting *Meachum v. Fano*,

427 U.S. 215, 225 (1976)).

In this case, plaintiff's claims do not implicate protected liberty interests. "[When] there is no liberty interest, there can be no due[-]process violation." *Williams v. Ramos*, 71 F.3d 1246, 1250 (7th Cir. 1995). Plaintiff has failed to state a legally sufficient claim for declaratory judgment. Accordingly, we find it unnecessary to discuss the issue of *laches*.

III. CONCLUSION

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

Affirmed.