2019 IL App (4th) 180375-U

NO. 4-18-0375

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 17, 2019
Carla Bender
4th District Appellate
Court, IL

RAYMOND SERIO, Plaintiff-Appellant, v. JOHN BALDWIN, in His Official Capacity as Acting Director of Corrections; and KENT E. BROOKMAN, in His Official Capacity as Chair Person of the Hearing Committee, Defendants-Appellees.	))))))))	Appeal from the Circuit Court of Sangamon County No. 16MR314 Honorable Brian T. Otwell, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the trial court's order dismissing plaintiff's petition for a writ of *certiorari*.

¶ 2 On April 26, 2018, the trial court dismissed plaintiff Raymond Serio's petition for a writ of *certiorari* pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2016)). Plaintiff, a prisoner in the Department of Corrections (Department), appeals, arguing the court erred in dismissing his case for the following reasons: (1) defendants, John Baldwin and Kent E. Brookman, the acting director of the Department and the chair person of the Department's hearing committee, respectively, violated plaintiff's due process rights during his prison disciplinary proceeding, and (2) plaintiff stated a claim for a common law writ of *certiorari*. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 11, 2016, plaintiff filed a petition for a writ of *certiorari* in the trial court. Paragraphs five, six, and seven below provide a summary of the factual allegations in plaintiff's petition, which we must treat as true for purposes of this appeal.

¶ 5 On September 1, 2015, while he was an inmate at the Menard Correctional Center (Menard), plaintiff was escorted to the segregation unit visiting room and questioned by two internal affairs officers at the prison. Plaintiff waived his *Miranda* rights and consented to taking a voice stress analysis test. The internal affairs officers told plaintiff a prison staff member accused him of urinating on her while she was outside his cell. The officers questioned plaintiff about the alleged incident and told plaintiff a pair of pants was being tested for the presence of urine. Plaintiff denied urinating on the staff member and asked the officers to review surveillance footage which plaintiff claimed would show he did not urinate on the staff member. The internal affairs officers said they would conduct a full investigation, including interviewing plaintiff's cellmate, inmates in a neighboring cell, and the correctional officer who accompanied the female staff member to plaintiff's cell when the alleged incident occurred. Plaintiff signed a written statement and was then taken to a cell in the segregation unit where he was left completely naked without bedding or other property until September 14, 2015.

¶ 6 On September 2, 2015, petitioner was served with an inmate disciplinary report (IDR), charging him with staff assault for urinating on the staff member's leg. When the IDR was served on plaintiff, he was naked and did not have any of his property. He was unable to sign the IDR or write the names of witnesses and their expected testimony on the IDR. Nearly two weeks later, on September 15, 2015, plaintiff was given a jumpsuit and taken to a hearing on the charge. Plaintiff asked the adjustment committee to (1) consider (a) all statements regarding the incident given to the internal affairs office and (b) surveillance video of the incident and (2)

allow plaintiff to take a voice stress test. Plaintiff denied committing the offense. The adjustment committee told plaintiff the hearing would be continued, the correctional officer who was with the staff member at the time of the incident would be contacted, and plaintiff would be called back to the hearing. The next day, plaintiff was provided a new identification card on which he was labeled a "staff assaulter" based on the staff member's statement in the IDR. Plaintiff was sentenced to one year of C-Grade status, one year in segregation, one year of commissary restrictions, and six months of contact visit restrictions.

¶ 7 According to plaintiff's petition, defendants failed to follow proper procedure, failed to conduct a real hearing, refused to consider any of the evidence he asked them to consider, and deprived him of a protected property right as guaranteed by both the federal and state constitutions. Plaintiff also argues defendants did not comply with sections 504.70 and 504.80 of Title 20 of the Administrative Code (20 Ill. Adm. Code § 504.70 (2003); 20 Ill. Adm. Code § 504.80, amended at 27 Ill. Reg. 6214 (eff. May 1, 2003).

¶ 8 On July 1, 2016, defendants filed a motion to dismiss plaintiff's petition. Defendants alleged plaintiff was not entitled to *certiorari* review because his petition and the records show the adjustment committee's decision was supported by sufficient evidence and was not against the manifest weight of the evidence. Further, plaintiff received the process he was due.

¶ 9 On April 26, 2018, the trial court allowed defendants' motion to dismiss plaintiff's petition, finding as follows:

> "The Adjustment Committee provided all the due process required by Section 504.80 in connection with the hearing on the disciplinary report. *Wolff [v.] McDonnell* does not require the committee to consider evidence such as that

requested by petitioner, only to afford petitioner an opportunity to speak in his own defense. The committee is required to find only 'some evidence' that petitioner committed the offense; such evidence existed in the present case."

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 A common-law writ of *certiorari* provides a means whereby a party who has no avenue of appeal or direct review may obtain limited review over actions by a court or other tribunal exercising quasi-judicial functions. *Reichert v. Court of Claims of State of Illinois*, 203 Ill. 2d at 257, 260, 786 N.E.2d 174, 177 (2003). The purpose of a writ of *certiorari* is to have the entire record of the inferior tribunal brought before the trial court to determine, from that record alone, if the former proceeded according to the applicable law. *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 427, 551 N.E.2d 640, 645 (1990). However, there is no right to review by *certiorari*, and the issuance of the writ is within the sound discretion of the trial court. *Stratton*, 133 Ill. 2d at 428, 551 N.E.2d at 646. The purpose of a writ of *certiorari* is to prevent injustice. *Stratton*, 133 Ill. 2d at 428, 551 N.E.2d at 646. "The writ should not issue where it would operate inequitably or unjustly, or in the absence of substantial injury or injustice to the petitioner." *Stratton*, 133 Ill. 2d at 428, 551 N.E.2d at 646. "[P]roperly pled allegations of a denial of due process in prison disciplinary proceedings are reviewable in an action for *certiorari*." *Fillmore v. Taylor*, 2019 IL 122626, ¶ 67.

¶ 13 In this case, plaintiff alleged his due process rights were violated during his prison disciplinary proceeding. The trial court dismissed plaintiff's petition for a writ of *certiorari* as a matter of law pursuant to section 2-615 of the Procedure Code (735 ILCS 5/2-615 (West 2016)). In reviewing the dismissal, we apply a *de novo* standard of review. *Fillmore*, 2019 IL 122626,

¶ 35. We can affirm the dismissal for any reason found in the record. *Akemann v. Quinn*, 2014 IL App (4th) 130867, ¶ 21, 17 N.E.3d 223.

¶ 14 After plaintiff and defendants each filed a brief with this court, our supreme court filed its opinion in *Fillmore v. Taylor*, 2019 IL 122626. In *Fillmore*, the supreme court rejected and reversed this court's holding an alleged violation of a Department regulation found in the Illinois Administrative Code, by itself, would justify the issuance of a common law writ of *certiorari*. *Fillmore*, 2019 IL 122626, ¶ 55. The supreme court noted, "it is not the violation of the Department regulations itself that give rise to a cause of action but, rather, the interest affected by the discipline imposed for that violation." *Fillmore*, 2019 IL 122626, ¶ 54. After the supreme court issued its opinion in *Fillmore*, plaintiff requested and this court granted two extensions so plaintiff, who was proceeding *pro se*, could address the supreme court's decision in his reply brief. On August 19, 2019, plaintiff filed his reply brief.

¶ 15 Based on the supreme court's opinion in *Fillmore*, we affirm the dismissal of plaintiff's petition as a matter of law. Plaintiff was neither deprived good conduct credit nor disciplined in a manner that would cause a prisoner atypical and significant hardship in relation to the ordinary circumstances of prison life. As noted earlier, plaintiff's allegation defendants failed to follow the Department's administrative regulations, by itself, did not justify the issuance of a writ of *certiorari*.

¶ 16 In *Fillmore*, our supreme court relied on the United States Supreme Court's decision in *Sandin v. Conner*, 515 U.S. 472 (1995). In *Sandin*, the Court noted it "ha[d] wrestled with the language of intricate often rather routine prison guidelines" in a series of cases after its decision in *Hewitt v. Helms*, 459 U.S. 460, 468 (1983), "to determine whether mandatory language and substantive predicates [in prison guidelines] created an enforceable expectation

that the State would produce a particular outcome with respect to the prisoner's conditions of confinement." *Sandin,* 515 U.S. at 480-81. According to the Court*:*

> "By shifting the focus of the liberty interest inquiry to one based on the language of a particular regulation, and not the nature of the deprivation, the Court encouraged prisoners to comb regulations in search of mandatory language on which to base entitlements to various state–conferred privileges. Courts have, in response, and not altogether illogically, drawn negative inferences from mandatory language in the text of prison regulations." *Sandin*, 515 U.S. at 481.

¶ 17 The Court noted its opinion in *Hewitt v. Helms*, 459 U.S. 460 (1983), had created "disincentives for States to codify prison management procedures in the interest of uniform treatment." *Sandin*, 515 U.S. at 482. In addition, "the *Hewitt* approach *** led to the involvement of federal courts in the day-to-day management of prisons, often squandering judicial resources with little offsetting benefit to anyone." *Sandin*, 515 U.S. at 482. The Court stated this ran counter to rulings by the Court that "federal courts ought to afford appropriate deference and flexibility to state officials trying to manage a volatile environment." *Sandin*, 515 U.S. at 482. As a result, the Court opined:

> "In light of the above discussion, we believe that the search for a negative implication from mandatory language in prisoner regulations has strayed from the real concerns undergirding the liberty protected by the Due Process Clause. The time has come to return to the due process principles we believe were correctly established and applied in *Wolff* [*v. McDonnell*, 418 U.S. 539 (1974)] and *Meachum* [*v. Fano*, 427 U.S. 215 (1976)]. Following *Wolff*, we recognize that States may under certain circumstances create liberty interests which are protected

> by the Due Process Clause. [Citation.] But these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, *** nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. at 483-84.

According to the Court, "[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the [prison] sentence imposed by a court of law." *Sandin*, 515 U.S. at 485.

¶ 18 In *Wolff*, the United States Supreme Court held a State may create a liberty interest in good conduct credit for a prisoner. In that situation, if the State wants to take back the credit, a prisoner's interest in the good conduct credit has "real substance and is sufficiently embraced within Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated." *Wolff*, 418 U.S. at 557. Later, in *Meachum*, the Court rejected "the notion that *any* grievous loss visited upon a person by the State is sufficient to invoke the procedural protections of the Due Process Clause." Instead, the Court stated the determining factor whether a person is entitled to due process procedures is the "nature of the interest involved rather than its weight." *Meachum*, 427 U.S. at 224.

¶ 19 Returning to our supreme court's reasoning in *Fillmore*, after reviewing the disciplinary actions available to the Department in section 504.80(k)(4) of Title 20 of the Administrative Code (20 Ill. Adm. Code 504.80(k)(4), amended at 27 Ill. Reg. 6214 (eff. May 1, 2003), the court stated:

"[W]ith limited exceptions, none of the disciplinary actions set forth in the Department's regulations impose atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. It is not the violation of the regulation itself that gives rise to the cause of action but, rather, the interest affected by the discipline imposed. Consequently, we cannot say that the Department's regulations create a right of action that allows inmates to file suit in state court to compel correctional officers to comply with the Department's regulations.

As *Sandin* recognized, in departing from an analysis that looked to the language of a particular regulation in order to determine a prisoner's liberty interest, such an analysis was 'a good deal less sensible in the case of a prison regulation primarily designed to guide correctional officials in the administration of a prison.' *Sandin*, 515 U.S. at 481-82. *Sandin* explained that 'such regulations [are] not designed to confer rights on inmates.' [*Sandin*, 515 U.S. at 482.] Rather, in the context of prison disciplinary proceedings, a prisoner is entitled to due process protections, such as the procedural protections set forth in *Wolff*, 418 U.S. 539, only when the penalty faced by the prisoner implicates a liberty interest because it affects the nature or duration of his confinement. *Sandin*, 515 U.S. at 486-87.

We see no reason to depart from the *Sandin* analysis in our review of Department regulations. We need not look to the language of each regulation to determine whether that particular regulation creates a right of action. The concerns animating the Court in *Sandin* in rejecting such an analysis apply

> equally in this court. To depart from the *Sandin* analysis in this court would likewise create disincentives for the State to codify prison management procedures and would lead to the involvement of state courts in day-to-day management of prisons." *Fillmore*, 2019 IL 122626, ¶ 47-49.

For that reason, the supreme court found this court's decision in *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 739 N.E.2d 897 (2000), was correct in stating that the Department regulations create no more rights for inmates than those that are constitutionally required. *Fillmore*, 2019 IL 122626, ¶ 49.

¶ 20 The supreme court did reverse the trial court's dismissal of the plaintiff's due process claims with prejudice. However, plaintiff's due process claim was dependent on his good conduct credit being revoked. S*ee Fillmore*, 2019 IL 122626, ¶ 67 ("Because plaintiff's complaint has stated a claim for violation of his right to due process in the revocation of his good conduct credits, we find that plaintiff's complaint stated a claim for common-law writ o*f certiorari* with regard to his due process claims"). The supreme court did not find the plaintiff's other punishments—one year in "C-grade," one year of segregation, a $15 per month restriction (presumably for the commissary), and one year of "Contact Visit Restrictions"—imposed atypical and significant hardships on the plaintiff in relation to the ordinary incidents of prison life.

¶ 21 Here, plaintiff did not lose any good conduct credit. Further, the punishment plaintiff received (one year of "C-grade," one year of segregation, one year of commissary restriction, and six months of contact visit restrictions) did not impose atypical and significant hardships on him in relation to the ordinary incidents of prison life any more than the similar punishments imposed atypical and significant hardships on the prisoner in *Fillmore*. As a result,

pursuant to our supreme court's decision in *Fillmore*, we affirm the trial court's dismissal of plaintiff's petition for a writ of *certiorari*.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the trial court's order dismissing plaintiff's petition for a common law writ of *certiorari*.

¶ 24 Affirmed.