

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned On Brief April 22, 2002

ROBERT HALL
v.
DONAL CAMPBELL, JAMES A. DUKES, and LISA A. REYNOLDS

Appeal from the Chancery Court for Lauderdale County
No. 11,755 Martha B. Brasfield, Chancellor

No. W2002-00301-COA-R3-CV - Filed October 29, 2002

This is a writ of certiorari case brought by a prisoner. The plaintiff, an inmate of the Tennessee Department of Correction, was found guilty by the prison disciplinary board of committing the offense of Conspiracy to Violate State Law. He was sentenced to punitive segregation, and thereafter placed in administrative segregation. The plaintiff prisoner petitioned for a writ of certiorari. The trial court granted the defendants' motion to dismiss, finding that the facts failed to show that the disciplinary board exceeded its jurisdiction, or acted illegally, arbitrarily, or fraudulently. We affirm.

Tenn. R. App. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

HOLLY K. LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Robert Hall, Nashville, Tennessee, appellant, pro se.

Arthur Crownover II, Nashville, for appellees, Donal Campbell, James A. Dukes, and Lisa A. Reynolds.

OPINION

Petitioner-Appellant Robert Hall ("Hall") is an inmate at the West Tennessee State Penitentiary ("WTSP").¹ On April 19, 2000, Hall was placed in involuntary administrative segregation in response to an altercation earlier that day between two other prisoners, Cunningham and Inman. On April 26, 2000, Hall was served with a Tennessee Department of Correction

¹The facts of this case and the arguments are derived primarily from the Petitioner's numerous documents and motions filed with the various courts. Respondents' cursory brief provided only minimal assistance to the Court.

(“TDOC”) Disciplinary Report charging him with Conspiracy to Violate State Law. The report alleged that Hall hired Cunningham to commit the assault against Inman.²

During the ensuing investigation, neither Hall nor Cunningham was interviewed. On May 2, 2000, the prison disciplinary board (“Disciplinary Board” or “WTSP Disciplinary Board”) conducted a hearing. At the hearing, evidence was presented regarding statements of two confidential informants who implicated Hall in the assault. Hall denied any involvement, and inmate Cunningham gave a statement denying that Hall was involved in the attack.

After the hearing, the disciplinary board found Hall guilty of the allegation. He was sentenced to thirty days in punitive segregation, and placed in involuntary administrative segregation for an indeterminate amount of time.

After exhausting all available appeals within the prison, Hall filed a petition for writ of certiorari in the Chancery Court of Lauderdale County, naming as Respondents Donal Campbell, James A. Dukes, and Lisa A. Reynolds (“Appellees”).³ Hall alleged that the investigation was improper, that there was a lack of evidence to support his conviction, that he was denied an impartial disciplinary tribunal, that he received inadequate assistance from his inmate advisor, and finally, that he was unable to contest his placement in administrative segregation. Hall sought to have his conviction overturned and his record expunged. He requested that he be released from segregation, that his “good time” sentence credits be restored, and that he be reimbursed for lost wages as a result of his placement in segregation.

The Respondents then filed a motion to dismiss, arguing (1) that TDOC, which was not named in the petition, was the only proper respondent; (2) that the petition should be dismissed because of incorrect venue; (3) that the complaint should be dismissed for failure to comply with the Prisoner Litigation Reform Act and sections 41-21-801 et seq. of the Tennessee Code Annotated; (4) that decisions of prison disciplinary boards are not subject to review by statutory writ of certiorari; and (5) that the petition for a common law writ of certiorari should be dismissed because the WTSP Disciplinary Board did not act unlawfully or in violation of Hall’s constitutional rights.⁴

Addressing the motion to dismiss, the trial court concluded that, since TDOC was the only proper party to be named as respondent, and Hall did not name TDOC as a respondent and did not

²*See also Littles v. Campbell*, No. W2002-00265-COA-R3-CV, 2002 Tenn. App. LEXIS 415, at *13-14 (Tenn. Ct. App. June 4, 2002), in which TDOC inmate Larry Littles was apparently found guilty of participating in the same incident, with similar result.

³Donal Campbell is the Commissioner of the TDOC, James A. Dukes is the Warden of the WTSP, and Lisa A. Reynolds is a Correctional Officer at the WTSP who acted as the Disciplinary Board Chairperson during Hall’s disciplinary hearing.

⁴Hall’s response to the motion to dismiss included a motion before this Court seeking a writ of mandamus. The motion was denied.

seek to amend his petition to name TDOC, the motion to dismiss should be granted on that basis. The trial court concluded that venue was proper and declined to dismiss on that ground. The trial court found that Hall had not complied with the statutory requirements that he file a complete list of lawsuits previously filed and that he file a copy of the prison grievance committee's final decision. On this basis, the trial court found that the petition should be dismissed without prejudice. The trial court also concluded that decisions of prison disciplinary boards are not subject to review by statutory writ of certiorari, and dismissed that claim in the petition. Regarding Hall's request for a common law writ of certiorari, the trial court found:

6. The Respondents argue that the common law writ of certiorari is not proper because the disciplinary board acted neither unlawfully nor did it violate the Petitioner's Constitutional rights.

With regard to the granting of a writ of certiorari:

It is well-settled that the scope of review under the common-law writ of certiorari is very narrow. Review under the writ is limited to whether the "inferior board or tribunal (1) has exceeded its jurisdiction, or (2) has acted illegally, arbitrarily, or fraudulently." McCallen v. City of Memphis, 786 S.W.2d 633, 638 (Tenn. 1990); see also Powell v. Parole Eligibility Review Bd., 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994). The intrinsic correctness of the decision is now [sic] reviewable under the writ. Arnold v. Tennessee Bd. of Paroles, 956 S.W.2d 478 (Tenn. 1997). As stated in Powell, "it is not the correctness of the decision that is subject to judicial review, but the manner in which the decision is reached." Powell, 879 S.W.2d at 873. . . .

It is not the role of the reviewing court under a common-law writ of certiorari to re-weigh the evidence. . . .

Perry vs. Cold Creek Correctional Facility, 2000 Tenn. App. LEXIS 519 (Ct. App. 2000).

The Petitioner asserts that (a) an improper investigation was conducted by Corporal Ottinger, (b) there was a lack of sufficient evidence to support the conviction, (c) he was denied an impartial disciplinary tribunal, and (d) there was a lack of adequate assistance by an inmate advisor. Items (a) and (b) deal with the

intrinsic correctness of the decision of the tribunal. It was the decision of the disciplinary board to determine if the investigation was proper based upon the testimony it heard. If the disciplinary board had determined that the investigation was improper and insufficient, it would have found the Petitioner not guilty of the charges. Item (b) (the lack of sufficient evidence to support the conviction) deals exclusively with whether the decision of the disciplinary board was correct. In item (c), the Petitioner concludes that the tribunal was not impartial because he, as a conspirator, received more time in involuntary administrative segregation than did the perpetrator of the fight. This is the only supporting evidence that the Petitioner gives for his conclusion of items (c). The Petitioner's reasoning is faulty. The fact that the Petitioner's sentence was more lengthy than the perpetrator's is no reason to conclude that the disciplinary board was not impartial. As to item (d), the Petitioner supports his statement that his inmate advisor provided inadequate assistance because, after the hearing, the inmate advisor lost an affidavit, had the Petitioner file a blank disciplinary appeal (which was against proper and accepted procedures), and did not present proper issues in the first appeal to Commissioner Campbell. The Petitioner makes no statement as to what the legal advisor did or did not do during the actual hearing that constituted inadequate assistance. The fact that the advisor did not, in the Petitioner's opinion, perfect the appeal and present the proper issues on appeal is not an indication that the advisor was inadequate during the hearing before the disciplinary board.

Therefore, on the basis that Hall "failed to set out facts which show that the disciplinary board exceeded its jurisdiction or acted illegally, arbitrarily, or fraudulently," the trial court dismissed Hall's petition for a writ or certiorari. From this order, Hall now appeals.

On appeal, Hall argues that Respondents are the proper parties to this action, that he complied with the statutory requirements that he list previous lawsuits and file the grievance committee's final decision, that the trial court's ruling regarding the statutory writ of certiorari is irrelevant, and that the disciplinary board acted illegally and arbitrarily. Hall contends that the sanctions levied against him triggered due process protection, and that his due process rights were violated because the disciplinary board failed to conduct an appropriate investigation, because it lacked sufficient evidence to convict him, because the tribunal was not impartial, and finally, because he received inadequate assistance from his inmate-advisor.

A motion to dismiss for failure to state a claim upon which relief may be granted tests the legal sufficiency of the plaintiff's claim, not the strength of the petitioner's proof. *Cook v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994). The grant of a motion to dismiss may be affirmed only if the allegations in the complaint, taken as true and construed liberally in favor of the plaintiff, fail to state a claim under which the plaintiff would be entitled to relief. *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997). Therefore, when reviewing a trial court's grant of motion to dismiss, all factual allegations are taken as true, and the trial court's

conclusions of law are reviewed de novo on the record with no presumption of correctness. *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999); Tenn. R. App. P. 13(d).

We address first Hall's argument that the trial court erred in granting the motion to dismiss on the basis that his petition failed to set out facts showing that the disciplinary board acted illegally, arbitrarily, or fraudulently. The common law writ of certiorari is an extraordinary judicial remedy and the scope of review is very narrow. *Willis v. Tenn. Dept. of Corr.*, No. M2000-1397-COA-R3-CV, 2002 Tenn. App. LEXIS 389, at *4-5 (Tenn. Ct. App. June 5, 2002); *Powell v. Parole Eligibility Review Bd.*, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994). Thus, the reviewing court may not inquire into the intrinsic correctness of the lower tribunal, *Arnold v. Tenn. Bd. of Pardons*, 956 S.W.2d 478, 480 (Tenn. 1997), but rather, it is well settled that the reviewing court can only grant the petition for common law writ of certiorari when the inferior tribunal, here the TDOC Disciplinary Board, exceeded its jurisdiction, or acted unlawfully, arbitrarily, or fraudulently. *Willis*, 2002 Tenn. App. LEXIS 389, at *4; *McCallen v. City of Memphis*, 786 S.W.2d 633, 638 (Tenn. 1990). "If the agency or board has reached its decision in a constitutional or lawful manner, then the decision would not be subject or judicial review." *Powell*, 879 S.W.2d at 873. Therefore, on appeal, this Court should review the petition to determine if it sets out sufficient factual allegations, which, if proven, would show that the WTSP Disciplinary Board exceeded its jurisdiction, or acted unlawfully, fraudulently, or arbitrarily. *Baxter v. Tenn. Dept. of Corr.*, No. M2000-2447-COA-R3-CV, 2002 Tenn. App. LEXIS 279, at *9 (Tenn. Ct. App. Apr. 23, 2002). Hall does not allege that the disciplinary board acted fraudulently or outside its jurisdiction, so we focus on his allegation that the disciplinary board acted illegally or arbitrarily.

Hall asserts that the manner in which the disciplinary hearing was conducted and his placement in administrative segregation triggered constitutional due process rights that were subsequently violated. The United States Supreme Court has held that in order for disciplinary sanctions to rise to the level of creating a protected liberty interest, the confinement, by itself, must impose an "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). In *Sandin*, the prisoner was sanctioned by a prison disciplinary board and sentenced to thirty days in punitive segregation. The Court found that such segregation was typical and was within the expected parameters of prison life. *Id.* at 486. Similarly, here, the disciplinary board found Mr. Hall guilty and sentenced him to thirty days in punitive segregation, followed by placement in administrative segregation for an indeterminate amount of time.

Hall asserts that his case is distinguishable from *Sandin* because, by statute, Hall's confinement in administrative segregation automatically prohibits him from being certified for parole eligibility during his time in administrative segregation, and for two years thereafter.⁵ Hall contends

⁵See Tenn. Code Ann. § 40-35-501(l)(2):

The department of correction shall not certify an inmate for a parole grant hearing, other than an initial grant hearing, if, at the time the department of correction would otherwise have certified the inmate as eligible, the inmate is classified as maximum custody. Such decertification shall continue for the

(continued...)

that the twenty months he has spent in administrative segregation, when combined with the automatic two-year delay in parole eligibility certification, results in a hardship atypical of the ordinary incidents of prison life. Administrative segregation is a non-punitive tool designed to help prison officials control and manage the prison. TDOC Policy # 404.10(VI)(A)(1).⁶ The Sixth Circuit Court of Appeals has stated that “administrative segregations have repeatedly been held not to involve an ‘atypical and significant’ hardship implicating a protected liberty interest without regard to duration,” *Jones v. Baker*, 155 F.3d 810, 812 (6th Cir. 1998), and that “after *Sandin*, [a prisoner cannot] argue that placement in administrative segregation is an ‘atypical and significant hardship.’” *Mackey v. Dyke*, 111 F.3d 460, 463 (6th Cir. 1997); *see also Woodruff v. Tenn. Dept. of Corr.*, No. M2001-00494-COA-R3-CV, 2002 Tenn. App. LEXIS 618, at *16 (Tenn. Ct. App. Aug. 28, 2002). Regarding the impact on Hall’s eligibility for parole, the United States Supreme Court has held that “[t]he decision to release a prisoner rests on a myriad of considerations” and that “the chance that a finding of misconduct will alter the balance [in making the decision to parole a prisoner] is simply too attenuated to invoke procedural guarantees of the Due Process Clause.” *Sandin*, 515 U.S. at 487; *see also Meachum v. Fano*, 427 U.S. 215, 229 n.8 (1976) (citation omitted) (“The granting of parole has itself not yet been deemed a function to which due process requirements are applicable”); *Luken v. Scott*, 71 F.3d 192, 193-94 (5th Cir. 1995) (“Any of a host of administrative or disciplinary decisions made by prison authorities might somehow affect the timing of a prisoner’s release, but such effects have never been held to confer a constitutionally protected liberty interest upon a prisoner such that the prison authorities must comply with the Constitutional requirements of due process.”). This Court has held explicitly that the “inability to obtain certification for a parole hearing” does not constitute a liberty interest which requires due process protections.” *Littles v. Campbell*, No. W2002-00265-COA-R3-CV, 2002 Tenn. App. LEXIS, at *13–14 (Tenn. Ct. App. June 5, 2002) (citing e.g., *Wright v. Trammell*, 810 F.2d 589, 591 (6th Cir. 1987); *see also Kaylor v. Bradley*, 912 S.W.2d 728, 735 (Tenn. Ct. App. 1995) (“[T]he Due Process Clauses of the state and federal constitutions protect only genuine claims involving pre-existing entitlements. They do not protect unilateral expectations or abstract needs or desires.”).

Hall also indicates that the disciplinary board’s alleged failure to follow its own policies should be grounds for relief. A failure to follow TDOC policies may be considered illegal only when the Board’s actions constitute a failure to follow the “essential requirements of the law.” *See Ahkeen v. Campbell*, No. M2000-2411-COA-R3-CV, 2001 Tenn. App. LEXIS 815, at *15 (Tenn. Ct. App. Nov. 2, 2001). The “essential requirements of the law” are comprised of those rights established by the due process clause. *Id.* at *21-22. Therefore, “the disciplinary proceeding is not ‘illegal’ within the meaning of . . . the common law writ of certiorari simply because the disciplinary board failed to comply with its own internal disciplinary policies; the petition for a writ of certiorari

⁵(...continued)

duration of such classification, and for a period of two (2) years thereafter.

Id. Pursuant to TDOC Policy # 404.10 VI(A)(4), inmates placed in administrative segregation are automatically classified as maximum custody.

⁶“ . . . [Administrative segregation] is for inmates who, because of conditions surrounding their incarceration, are believed to pose serious risks to the security and good order of the institution or to the safety of other inmates, staff, or the community and therefore require custody and security at the highest level. . . .” TDOC Policy # 404.10(VI)(A)(1).

must sufficiently allege a violation of due process.” *Baxter v. Tenn. Dept. of Corr.*, No. M2000-02447-COA-R3-CV, 2002 Tenn. App. Lexis 279, at *14 (Tenn. Ct. App. Apr. 23, 2002). Since Hall’s confinement in administrative segregation is not atypical of ordinary prison life, he is therefore unable to establish that the disciplinary proceedings triggered due process protections. Consequently, the disciplinary board’s alleged failure to follow its own policies is not sufficient to support a claim for relief.

Likewise, the petition sets forth no facts from which it could reasonably be concluded that the disciplinary board acted arbitrarily, that is, lacking a rational basis or not based on reasoning or judgment. *Willis v. Tenn. Dept. of Corr.*, No. M2000-1397-COA-R3-CV, 2002 Tenn. App. LEXIS 389, at *38-39 (Tenn. Ct. App. June 5, 2002).

Consequently, because the facts fail to show that the Disciplinary Board acted outside its jurisdiction, or unlawfully, arbitrarily, or fraudulently, the trial court properly dismissed Hall’s claim. This determination pretermits all other issues raised on appeal.

The decision of the trial court is affirmed. Costs are taxed to the appellant, Robert Hall, for which execution may issue if necessary.

HOLLY K. LILLARD, JUDGE