NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 230387-U

NO. 4-23-0387

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 13, 2024
Carla Bender
4th District Appellate
Court, IL

WINFRED OLIVER,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
GUY PIERCE, Warden, Pontiac Correctional Center; DONALD J. GISH, Chairperson of the Adjustment Committee at Pontiac Correctional Center; SHERRY BENTON, Administrative Review Board of the Department of Corrections; JEFFREY GABOR, Internal Affairs Officer for the Department of Corrections; PATRICK HASTINGS, Grievance Officer at Pontiac Correctional Center; and MICHAEL P. RANDLE, Director of the Department of Corrections,	)	No. 10MR380
Defendants-Appellees.	)	Honorable Ryan M. Cadagin, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Vancil concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff established a due process violation in the underlying prison disciplinary proceedings, as there was no evidence to support the revocation of his good-conduct credits. Thus, the trial court erred in quashing the writ of *certiorari*.

¶ 2 Plaintiff, Winfred Oliver, an inmate in the custody of the Illinois Department of Corrections (DOC) and a registered child sex offender serving a 50-year sentence for predatory criminal sexual assault, filed a *pro se* complaint for a common law writ of *certiorari* against defendants, Guy Pierce, warden of Pontiac Correctional Center (Pontiac); Donald J. Gish, chairperson of the Adjustment Committee at Pontiac (Adjustment Committee); Sherry Benton, a

member of the Administrative Review Board of DOC; Jeffrey Gabor, internal affairs officer for DOC; Patrick Hastings, grievance officer at Pontiac; and Michael P. Randle, director of DOC, all of whom are, or were, corrections officers employed by DOC. Plaintiff sought review of the disciplinary proceedings in which he was found guilty of violating a state law and which led to the revocation of one year of good-conduct credits. The trial court, after reviewing the certified record of the administrative proceedings and finding there was sufficient evidence to support the discipline imposed, quashed the writ. Plaintiff appealed the court's judgment.

¶ 3 On appeal, plaintiff argues, in relevant part, that the trial court erred in quashing the writ because he established a due process violation in that there was no evidence in the administrative record to support the revocation of his good-conduct credits. We agree with plaintiff and reverse the court's judgment.

¶ 4 I. BACKGROUND

¶ 5 In June 2010, plaintiff filed a complaint for a common law writ of *certiorari*, seeking review of the DOC disciplinary proceedings in which he was found guilty of violating a state law and, as part of his discipline, had one year of good-conduct credits revoked. In his *certiorari* complaint, plaintiff alleged he was deprived of his right to due process in the disciplinary proceedings where there was no evidence to support the finding he had committed, or had attempted to commit, the criminal offense alleged. The following relevant facts are gleaned from the allegations in plaintiff's complaint and the exhibits attached thereto.

¶ 6 On January 8, 2010, defendant Jeffrey Gabor authored an Offender Disciplinary Report alleging plaintiff violated disciplinary offense Nos. 501, "Violating State or Federal Laws," and 601, "Aiding and Abetting, Attempt, Solicitation or Conspiracy." 20 Ill. Adm. Code 504.Appendix A (2009). The report charged plaintiff with committing or attempting to commit

the criminal offense of child photography by a sex offender. See 720 ILCS 5/11-24(b)(3) (West 2008) (providing that it is unlawful for a child sex offender to knowingly "photograph, videotape, or take a digital image of a child, or instruct or direct another person to photograph, videotape, or take a digital image of a child without the consent of the parent or guardian"). According to the disciplinary report, plaintiff sent a letter to "Website Request"—a company that provides Internet access to prisoners—asking the company to send him "4 color prints of children." Plaintiff admitted to Gabor that he had sent the letter to Website Request.

¶ 7 On January 18, 2010, the Adjustment Committee conducted a disciplinary hearing and found plaintiff guilty of committing disciplinary offense Nos. 501 and 601. The committee's "Final Summary Report" indicated that in reaching its decision, the committee had reviewed (1) the disciplinary report, (2) the child photography by a sex offender statute, (3) plaintiff's letter to Website Request, and (4) plaintiff's written statement to the committee maintaining his innocence. The Adjustment Committee provided the following basis for its decision:

> "Based on the observation of the reporting employee that [plaintiff] sent a letter to 'Website Request' attempting to purchase images of cute pre-teen girls or boys in swimwear, beach, swimming pools, or kiddies beauty pageants; [plaintiff] also stated 'I'll try a small order to see if my institution will allow them in'; the reporting employee's positive identification of [plaintiff] by face and state ID card; the copy of [plaintiff's] letter to Website Request verifying that [plaintiff] was trying to conduct business with the company. The committee is satisfied that the violation occurred as reported."

The discipline imposed consisted of revocation of one year of good-conduct credits and one year of segregation. Following the committee's findings and imposition of discipline, plaintiff exhausted his disciplinary and administrative remedies.

¶ 8 In August 2010, defendants filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). The trial court granted defendants' motion, and plaintiff appealed.

¶ 9 On appeal, this court agreed with plaintiff that the trial court had erred in dismissing his *certiorari* complaint. *Oliver v. Pierce*, 2012 IL App (4th) 110005, ¶ 10. We held that if we were to accept as true plaintiff's allegation "that no evidence could have supported the Adjustment Committee's finding that he committed disciplinary offense Nos. 501 and 601 by committing or attempting to commit the offense specified in his disciplinary report," plaintiff "would be entitled to reversal of the Adjustment Committee's determination of guilt and its imposition of sanctions against him." *Id.* ¶ 15. We therefore reversed the trial court's judgment and remanded for further proceedings. *Id.* ¶ 18.

¶ 10 On remand, in April 2015, plaintiff filed a second amended *certiorari* complaint, in which he pleaded the same relevant allegations. In May 2015, defendants filed a "Brief in Response to Plaintiff's Second Amended Petition for Common Law Writ of Certiorari," requesting the trial court deny plaintiff's complaint. Defendants also attached the underlying "prison records" to their brief. The records consisted of the following documents: (1) the disciplinary report, (2) the child photography by a sex offender statute, (3) plaintiff's letter to Website Request, (4) plaintiff's two written statements to the Adjustment Committee requesting documents and maintaining his innocence, (5) and the Adjustment Committee's final summary report finding plaintiff guilty. The letter plaintiff wrote to Website Request reads as follows:

> "Dear Website Request,
>
> Thank you for my last order. I am now looking for cute pre-teen girls or boys in swimwear (two piece or one piece). Please let me know if such a site exists so I can place my order for prints. I'll try a small order to see if my institution will allow them in. In fact, I have a $3.50 balance on my account. Please send me 4 prints (color) as a test and deduct whatever the charges are. Next month I plan to send additional funds on my account."

According to an August 2015 docket entry, the trial court denied plaintiff's second amended complaint for a common law writ of *certiorari* following a hearing. Plaintiff appealed the court's judgment.

¶ 11 On appeal, this court again reversed the trial court's judgment, finding that, "[b]ased on the record in this case, the trial court abused its discretion in denying [plaintiff's] petition for a writ of *certiorari*." *Oliver v. Pierce*, 2016 IL App (4th) 150740-U, ¶ 24. We noted that "the trial court had no evidence defendant actually violated [the child photography by a sex offender] statute." *Id.* Thus, we directed the court to issue the writ on remand and, upon the return of the certified record, determine whether the writ or the underlying disciplinary proceedings should be quashed. *Id.* ("Once the certified record is submitted to the trial court pursuant to the writ of *certiorari*, the court will need to determine whether to quash the writ if the administrative body had sufficient evidence or quash the underlying administrative proceeding if sufficient evidence did not exist.").

¶ 12 On remand, in April 2017, defendants filed an answer to plaintiff's *certiorari* complaint, "consisting of a certified copy of the entire record of proceedings before the

administrative agency whose decision is here being reviewed." The certified record, in its entirety, consisted of the same documents defendants had attached to their May 2015 brief. Following a hearing on the merits of plaintiff's complaint, the trial court entered a written order denying the complaint and quashing the writ. The court found there was "sufficient evidence to discipline" plaintiff, and it further noted that "[d]isciplinary proceedings are distinct from criminal prosecutions and do not require the same burden of proof or sufficiency of the evidence."

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, plaintiff argues, in relevant part, the trial court erred in quashing the writ because he established a due process violation, stating there was no evidence in the administrative record to support the Adjustment Committee's finding that he had committed, or had attempted to commit, the criminal offense of child photography by a sex offender. According to plaintiff, his "conduct in seeking the mere possession or attempted possession of images of children does not equate to the actual production of such photographic imagery per the underlying criminal statute."

¶ 16 Defendants argue that because plaintiff does not dispute that he is a "child sex offender," the evidence established he committed the elements of the offense, "given that he caused the production of photographs of children without parental consent when he ordered the color prints." Defendants maintain that to find otherwise would lead to an absurd result and run counter to the intent of the legislature. Specifically, defendants contend that the legislature "plainly intended not just to erect a barrier between offenders and children, but also to prevent production of photographs for the improper use of child sex offenders."

¶ 17 "A common-law writ of *certiorari* is the 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 2014)) and the act provides for no other form of review." *Fillmore v. Taylor*, 2019 IL 122626, ¶ 67. "The purpose of the writ was, and is, to have the entire record of the inferior tribunal brought before the court to determine, from the record alone, whether that body proceeded according to the applicable law." *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 427 (1990). "If the circuit court, on the return of the writ, finds from the record that the inferior tribunal proceeded according to law, the writ is quashed; however, if the proceedings are not in compliance with the law, the judgment and proceedings shown by the return will be quashed." *Id.* "Where the agency is not arbitrary in its findings and there is evidence in the record of its proceedings which fairly tends to support the findings, a reviewing court is not justified in substituting its judgment for the discretion and judgment of the agency." *Quinlan & Tyson, Inc. v. City of Evanston*, 25 Ill. App. 3d 879, 884 (1975). "In reviewing an agency's decision under common law *certiorari* the standard applied is whether there is any evidence in the record which fairly tends to support it." *Kraft, Inc., Dairy Group v. City of Peoria*, 177 Ill. App. 3d 197, 204 (1988).

¶ 18 In *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), the Supreme Court held that where a state has created a right to good-conduct credits, "the prisoner's interest [in the credits] 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." Thus, "due process protects a prison inmate from revocation of good-time credit unless the disciplinary

proceedings comported with the state laws governing prison discipline." *Oliver,* 2012 IL App (4th) 110005, ¶ 13. Section 3-8-7 of the Unified Code of Corrections requires DOC to establish and follow certain disciplinary procedures in cases involving the revocation of good-conduct credits. 730 ILCS 5/3-8-7 (West 2008). DOC's established disciplinary procedure, in relevant part, provides that a prisoner's good-conduct credits can only be revoked if the Adjustment Committee is "reasonably satisfied there is some evidence that the offender committed the offense." 20 Ill. Adm. Code 504.80(k)(1) (2009). "Even allowing for due deference to prison officials in operating the prison disciplinary system, these rules establish a standard against which a court may evaluate prison disciplinary actions in the context of *certiorari* proceedings." *Oliver,* 2012 IL App (4th) 110005, ¶ 14.

¶ 19 Here, plaintiff was charged with committing or attempting to commit the criminal offense of child photography by a sex offender. In relevant part, the statute provides as follows:

> "(b) It is unlawful for a child sex offender to knowingly:
>
> (1) conduct or operate any type of business in which he or she photographs, videotapes, or takes a digital image of a child; or
>
> (2) conduct or operate any type of business in which he or she instructs or directs another person to photograph, videotape, or take a digital image of a child; or
>
> (3) photograph, videotape, or take a digital image of a child, or instruct or direct another person to photograph, videotape, or take a digital image of a child without the consent of the parent or guardian." 720 ILCS 5/11-24(b) (West 2008).

The Adjustment Committee found there was sufficient evidence to find a violation had occurred, and it based its decision on the letter plaintiff sent to Website Request, which read:

> "Thank you for my last order. I am now looking for cute pre-teen girls or boys in swimwear (two piece or one piece). Please let me know if such a site exists so I can place my order for prints. I'll try a small order to see if my institution will allow them in. In fact, I have a $3.50 balance on my account. Please send me 4 prints (color) as a test and deduct whatever the charges are. Next month I plan to send additional funds on my account."

¶ 20 We agree with plaintiff that the evidence only establishes that he attempted to possess photographs of children, not that he attempted to "instruct or direct another person to photograph *** a child." *Id.* It is clear from the letter that plaintiff requested printouts from a website, meaning the images were already in existence. In his request to Website Request, a company that provides Internet access to prisoners, plaintiff placed an "order for prints," which is not an instruction or direction to the company to take a photograph of a child. In our previous decision, commenting on the exact same evidence that the trial court here found was sufficient to find defendant guilty of the offense, we stated "the trial court had no evidence defendant actually violated this statute. Perhaps his actions violated some other administrative rule or statute. However, he was charged with violating a specific statute." *Oliver*, 2016 IL App (4th) 150740-U, ¶ 24.

¶ 21 We find, as we did in *Oliver*, that there is no evidence in the administrative record to support the finding that plaintiff attempted to commit the offense of child photography by a sex offender. *Id.* See *Kraft, Inc., Dairy Group*, 177 Ill. App. 3d at 204 ("In reviewing an

agency's decision under common law *certiorari* the standard applied is whether there is any evidence in the record which fairly tends to support it."). As a result, the Adjustment Committee acted arbitrarily in revoking his good-conduct credits and violated his due process rights. See *Wolff*, 418 U.S. at 558. Accordingly, the trial court erred in quashing the writ instead of the disciplinary proceedings.

¶ 22 In closing, we note plaintiff has raised several additional arguments on appeal. However, because we have resolved the appeal in his favor, we find it unnecessary to address those arguments.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we reverse the trial court's judgment.

¶ 25 Reversed.