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AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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FRANCISCO ROBINSON, *Plaintiff/Appellant*,

*v.*

CHARLES RYAN, as Director, Arizona Department of Corrections;  
Regina Dorsey; Anna Gonzales; David Summers; Karyn Klausner,  
*Defendants/Appellees.*

No. 1 CA- CV 12-0535

FILED 12-26-2013

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Appeal from the Superior Court in Maricopa County  
No. LC2012-000049-001  
The Honorable Joseph C. Kreamer, Judge

**AFFIRMED**

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COUNSEL

Francisco Robinson, Buckeye  
*Plaintiff/Appellant, in propria persona*

Arizona Attorney General's Office, Phoenix  
By Michael E. Gottfried  
*Counsel for Defendants/Appellees*

**MEMORANDUM DECISION**

Presiding Judge Peter B. Swann delivered the decision of the Court, in which Judge Patricia K. Norris and Judge Donn Kessler joined.

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**S W A N N**, Judge:

¶1 Francisco Robinson, an inmate in the Arizona Department of Corrections (“DOC”), appeals from the superior court’s denial of special action relief against Director Charles Ryan and certain DOC employees (collectively “Defendants”). For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 On August 7, 2011, Corrections Officer Butler searched Robinson’s cell at the Buckley Unit of the Lewis Prison Complex and found a small block of what appeared to be black-tar heroin. Officer Butler observed Robinson remove the substance from the back of his pants immediately before the search, and “found the drugs in a plastic bag among the property on the lower bunk belonging to inmate Robinson.” Robinson maintained that the drugs did not belong to him and that the lower bunk was assigned to his cell mate. The search also revealed a cutting device made from a razor blade, a cigarette lighter, and a list of names with dollar amounts next to them. Sergeant Schwartz put the suspected contraband in an evidence bag, completed the chain of custody, and orally placed Robinson on report. Robinson received written notification of his drug-possession charge two days later.

¶3 Robinson appeared for his disciplinary hearing on August 23 and pled not guilty. After reviewing written reports and photographs of physical evidence, Disciplinary Hearing Officer (“DHO”) Summers found it more probably true than not that Robinson had committed the charged disciplinary violation. Accordingly, Summers imposed the following penalties: (1) loss of 60 days of earned release credits; (2) placement in Parole Class III for 60 days; (3) loss of inmate privileges for 30 days; and (4) loss of visitation for 30 days. Testing conducted shortly after the hearing confirmed that the substance was in fact heroin, and this fact was noted on Robinson’s Result of Disciplinary Hearing (“conviction form”).

ROBINSON v. RYAN et al.  
Decision of the Court

¶4 Robinson exhausted DOC's administrative appeals process to no avail, and in turn petitioned the superior court for special action relief based on alleged due process violations in the disciplinary proceedings. Defendants moved to dismiss and Robinson responded with a motion to "reply to Defendant's answer and motion to dismiss and to request limited discovery." The superior court accepted special action jurisdiction but denied relief.

¶5 Robinson timely appeals.

**STANDARD OF REVIEW**

¶6 We review the superior court's grant or denial of special action relief for an abuse of discretion, *Files v. Bernal*, 200 Ariz. 64, 65, ¶ 2, 22 P.3d 57, 58 (App. 2001), and "will uphold a denial of special action relief if our review reveals any valid reason for so doing," *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305, ¶ 6, 18 P.3d 97, 99 (App. 2000). "Generally, a court abuses its discretion where the record fails to provide substantial support for its decision or the court commits an error of law in reaching the decision." *Files*, 200 Ariz. at 65, ¶ 2, 22 P.3d at 58.

**DISCUSSION**

¶7 Robinson advances three arguments on appeal: (1) the superior court lacked jurisdiction to hear his special action petition but should have treated it as one for a writ of habeas corpus; (2) his disciplinary proceedings did not afford him due process; and (3) the superior court failed to consider his response to Defendants' motion to dismiss and erred in denying his discovery request. We address each argument in turn.

I. THE SUPERIOR COURT PROPERLY ACCEPTED JURISDICTION.

¶8 Robinson argues, and Defendants agree, that A.R.S. § 31-201.01(L) should have precluded the superior court from accepting jurisdiction to hear his special action. Section 31-201.01(L) provides:

A person who is convicted of a felony offense and who is incarcerated while awaiting sentence or while serving a sentence imposed by a court of law may not bring a cause of action seeking damages or equitable relief from the state or its political subdivisions, agencies, officers or employees for injuries suffered while in the custody of the state or its political subdivisions or agencies unless the complaint

ROBINSON v. RYAN et al.  
Decision of the Court

alleges specific facts from which the court may conclude that the plaintiff suffered serious physical injury or the claim is authorized by a federal statute.

*See also Tripati v. State*, 199 Ariz. 222, 225, ¶ 9, 16 P.3d 783, 786 (App. 2000) (holding that § 31-201.01(L) barred inmate's tort claim for lost property because the complaint did not allege serious physical injury nor did a federal statute authorize the claim).

¶9 We disagree with the parties' interpretation of § 31-201.01(L). Robinson did not "bring a cause of action" within the meaning of § 31-201.01(L). Rather, Robinson petitioned for special action relief to continue defending, on due process grounds, a disciplinary charge brought against him.

¶10 We therefore hold that Robinson was not statutorily barred from bringing the special action, the superior court acted within its discretion when it accepted jurisdiction over the special action, and the case should not have been treated as a petition for writ of habeas corpus.

II. THE DISCIPLINARY PROCEEDINGS SATISFIED DUE PROCESS.

¶11 Robinson further contends that his disciplinary proceedings denied him due process. Specifically, Robinson contends that Defendants ignored his witness request, failed to present sufficient evidence to support his disciplinary conviction, and adjudicated his administrative appeals based on incomplete arguments and evidence produced after his disciplinary hearing.

¶12 "The touchstone of due process under both the Arizona and federal constitutions is fundamental fairness." *State v. Melendez*, 172 Ariz. 68, 71, 834 P.2d 154, 157 (1992). But "[p]rison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). In the disciplinary-proceeding context, due process entitles an inmate to: (1) written notice of the charges at least 24 hours before the inmate must appear for the hearing; (2) a written statement of the evidence and reasons supporting the disciplinary action; (3) the right to call witnesses and present evidence in the inmate's defense, to the extent practicable; (4) limited forms of assistance in defending against the charges when the inmate is illiterate or the proceedings are complex; and (5) an impartial disciplinary hearing officer or committee. *Id.* at 563-71.

ROBINSON v. RYAN et al.  
Decision of the Court

¶13 Moreover, due process requires that “some evidence” support a decision to revoke earned release credits. *Superintendent v. Hill*, 472 U.S. 445, 455 (1985). “Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” *Id.* at 455-56.

¶14 Here, Robinson relies on unsupported assertions in his special action petition to contend that Defendants ignored his request to have Officer Butler testify. Robinson alleges, for example, that Disciplinary Coordinator Gonzales failed to process a witness form that Officer Butler purportedly completed and returned to Gonzales. In Robinson’s words, “[Officer Butler] would have provided extremely germane testimony that would have exonerated Plaintiff.” Other than personal conjecture, however, Robinson offers no support for his contention -- nor do we find any in the record before us.

¶15 To the contrary, Robinson’s conviction form states “NONE RETURNED” in response to “Witness Statements Used.” In addition, notes from an investigatory interview with Officer Butler confirm that he personally observed Robinson remove the contraband from the back of his pants. Further, DOC disciplinary regulations require inmates to make witness requests and propose questions for each in writing before the disciplinary hearing. Yet there is nothing in the record to indicate that Robinson ever attempted to request witnesses or propose questions, or that Defendants ignored such a request.

¶16 Even assuming, *arguendo*, that DHO Summers had denied a valid request from Robinson to have Officer Butler testify, such error, if any, would be harmless. *Grossman v. Bruce*, 447 F.3d 801, 805 (10th Cir. 2006) (“[E]rrors made by prison officials in denying witness testimony at official hearings are subject to harmless error review.”). In this case, Officer Butler made only inculpatory statements and there has been no showing that his testimony would have been helpful to Robinson. See *Piggie v. Cotton*, 344 F.3d 674, 678 (7th Cir. 2003) (rejecting alleged due process violation based on harmless error analysis because inmate failed to explain how excluded testimony would have aided in his defense against disciplinary charges).

¶17 The record likewise belies Robinson’s assertion that “no evidence was submitted” to support his disciplinary conviction. His conviction form shows that DHO Summers found Robinson guilty after

ROBINSON v. RYAN et al.  
Decision of the Court

reviewing the Disciplinary Report, Information Reports, Investigative Reports, and photographs of evidence. The evidence supported a finding that Officer Butler retrieved a small block of what appeared to be black-tar heroin from Robinson's cell after observing Robinson remove it from the back of his pants just before the search. And although Robinson maintains that the contraband did not belong to him and that Officer Butler found it on his cell mate's bunk, DOC regulations define "possession" to include the following example: "An item found inside a cell is deemed 'in possession' of all assigned occupants of the cell." We therefore conclude that "some evidence" existed to support his conviction.

¶18 We also find unavailing Robinson's argument that his administrative appeals denied him due process. In this regard, he claims that the first of his two DOC appeals violated due process because a number of pages from his written argument were allegedly lost in the process. Further, Robinson contends that both of his DOC appeals failed to comport with due process because the heroin test result was noted on his conviction form only after DHO Summers had found him guilty.

¶19 First, "inmates lack a separate constitutional entitlement to a specific prison grievance procedure." *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). Second, whatever procedural defect might have existed in Robinson's initial DOC appeal constituted harmless error because the allegedly missing pages were considered in his second appeal, which likewise upheld his disciplinary conviction. *See Powell v. Coughlin*, 953 F.2d 744, 750 (2d Cir. 1991) ("[I]t is entirely inappropriate to overturn the outcome of a prison disciplinary proceeding because of a procedural error without making the normal appellate assessment as to whether the error was harmless or prejudicial."). Third, although the heroin test result was noted on Robinson's conviction form after his conviction, it only served to corroborate DHO Summers' conclusion that Robinson had more probably than not committed the charged disciplinary violation. The outcome may have been different had the test result been inconsistent with Robinson's conviction, but here the notation did not unfairly prejudice Robinson in later defending the charges.

¶20 On this record, we cannot conclude the superior court abused its discretion in denying Robinson special action relief.

ROBINSON v. RYAN et al.  
Decision of the Court

III. THE SUPERIOR COURT'S DENIAL OF DISCOVERY WAS NOT AN ABUSE OF DISCRETION.

¶21 Finally, Robinson alleges that the superior court failed to consider his response to Defendants' motion to dismiss and asserts that the court erred in denying his discovery request. However, "[a] trial court has broad discretion in matters of discovery, and its decision will not be disturbed absent a showing of an abuse of that discretion. . . . [T]his is no less true when discovery is requested in a special action proceeding in the superior court." *Lewis v. Ariz. Dep't of Econ. Sec.*, 186 Ariz. 610, 616, 925 P.2d 751, 757 (App. 1996) (citations omitted). We note that discovery is often unnecessary in special actions that pose purely legal questions. *Id.*; see also *Riggins v. Graham*, 20 Ariz. App. 196, 198, 511 P.2d 209, 211 (1973).

¶22 After reviewing the record, we conclude the superior court acted within its discretion in denying Robinson's discovery request. And although the court's ruling does not reference Robinson's response motion, he fails to explain how this purported error constitutes grounds for reversal when that motion did not present any new factual or legal arguments.

CONCLUSION

¶23 For the reasons set forth above, we affirm.



Ruth A. Willingham · Clerk of the Court  
FILED: gsh