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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 03/11/2010  
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BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

FOX JOSEPH SALERNO, ) No. 1 CA-CV 08-0830  
)  
Plaintiff/Appellant, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
)  
ARIZONA DEPARTMENT OF ) (Not for Publication -  
CORRECTIONS; DORA B. SCHRIRO, as ) Rule 28, Arizona Rules of  
director of the Arizona ) Civil Appellate Procedure)  
Department of Corrections, )  
)  
Defendants/Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CV2008-013403

The Honorable Bethany G. Hicks, Judge

**AFFIRMED**

Fox Joseph Salerno  
Plaintiff/Appellant *In Propria Persona*

Florence

Terry Goddard, Arizona Attorney General  
By Michele L. Forney, Assistant Attorney General  
Attorneys for Defendants/Appellees

Phoenix

**B R O W N**, Judge

¶1 Fox Salerno appeals the superior court's dismissal of his complaint against the Arizona Department of Corrections and its former Director Dora Schriro (collectively "ADOC") regarding

the computation and application of his criminal sentences. For the following reasons, we affirm.

#### **BACKGROUND**

¶2 Salerno is an inmate at the ADOC Florence facility. Prior to April 2008, while incarcerated, he requested his release dates. After conducting an audit of his sentences, ADOC provided him with his anticipated dates for release and community supervision. Believing his sentence to be incorrect, Salerno filed a series of petitions seeking post-conviction relief under Rule 32 of the Arizona Rules of Criminal Procedure. According to the record before us, the most recent petition was dismissed in April 2008 based on the superior court's conclusion that: (1) it had no authority to determine release dates, (2) Salerno had not demonstrated that he was being held in custody beyond the expiration of his sentence, and (3) he had not stated any claim upon which the court could grant relief.

¶3 In June 2008, Salerno filed a civil complaint against ADOC under the Administrative Review Act ("ARA"), Arizona Revised Statutes ("A.R.S.") sections 12-901 to -914 (2003),<sup>1</sup> challenging ADOC's computation and application of his criminal sentences. ADOC moved to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon

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<sup>1</sup> We cite the current version of the applicable statutes if no revisions material to this decision have since occurred.

which relief could be granted. The superior court dismissed Salerno's complaint in October 2008 without elaboration. Salerno timely appealed and we have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003) and Ariz. R.P. Spec. Act. 8(a).

#### DISCUSSION

¶4 Salerno raises ten issues on appeal; we address only those issues necessary to support our decision. See *Williams v. Nall*, 4 Ariz. App. 416, 419, 420 P.2d 988, 991 (App. 1966) (finding that the court of appeals is constrained to approve of trial court's decision if it is supportable under any theory within the pleadings and an interpretation of the facts favorable to the judgment appealed).

¶5 We review de novo the dismissal of a complaint based on lack of jurisdiction or failure to state a claim. *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 391, ¶ 18, 121 P.3d 1256, 1261 (App. 2005); *Ariz. Soc'y of Pathologists v. Ariz. Health Care Cost Containment Sys. Admin.*, 201 Ariz. 553, 556, ¶ 13, 38 P.3d 1218, 1221 (App. 2002). We will affirm if "satisfied as a matter of law that [the] plaintiff[] would not be entitled to relief under any interpretation of the facts susceptible of proof." *Jeter*, 211 Ariz. at 391, ¶ 18, 121 P.3d at 1261 (quoting *Fidelity Sec. Life Ins. Co. v. State of Ariz. Dep't of Ins.*, 191 Ariz. 222, 224, ¶ 4, 954 P.2d 580, 582 (1998)). We may affirm on any basis supported by the record. *Ariz. Water*

*Co. v. Ariz. Dep't of Water Res.*, 208 Ariz. 147, 152 n.10, 91 P.3d 990, 995 n.10 (2004).

**A. Appellate Jurisdiction**

¶16 Salerno first challenges this court's jurisdiction to hear his appeal. He asserts that our supreme court is required to hear this appeal, relying on A.R.S. § 12-913 (2003), which states that a "final decision, order, judgment or decree of the superior court entered in an action to review a decision of an administrative agency may be appealed to the supreme court." Salerno's reliance on the literal language of the statute is misplaced. This court has jurisdiction to review orders and decisions of an administrative body. See *J.H. Welsh & Son Contracting Co. v. Ariz. State Tax Comm'n*, 4 Ariz. App. 398, 399-401, 420 P.2d 970, 971-73 (1966) (explaining that when court of appeals was created, pursuant to § 12-120.21(A)(1), "supreme court" in statutes such as § 12-913 came to mean "court of appeals"). Thus, we have jurisdiction to consider Salerno's appeal.

**B. Special Action Designation**

¶17 Salerno further contends that the superior court erred in considering his complaint as a special action rather than an ordinary civil complaint. We disagree.

¶18 Under the Arizona Rules of Procedure for Special Actions, a special action proceeding is appropriately initiated

by any person who could apply for a writ of mandamus. Ariz. R.P. Spec. Act. 2(a)(1). The type of questions permitted to be raised in a special action is limited, but includes:

- (a) Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or
- (b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority[.]

Ariz. R.P. Spec. Act. 3(a),(b).

¶19 Here, Salerno's complaint alleged that "prison officials [] are required by law to calculate release dates by the statutes contained in sentencing orders." He sought to have the court order ADOC to recalculate his release date in accordance with his sentencing orders. The relief Salerno sought falls squarely within the longstanding function of a writ of mandamus. See *Dey v. McAlister*, 19 Ariz. 306, 306, 169 P. 458, 458 (1918) (recognizing that a writ of mandamus is used to compel the performance of an act by an official who has a duty to so act). By alleging that ADOC failed to perform its required duty of correctly calculating and applying his sentencing order, and then seeking to have this duty compelled by the court, Salerno initiated a special action proceeding, whether he intended to do so or not.

¶10 Denial of special action relief lies within the discretion of the superior court. *State ex. rel. Dean v. City Court*, 123 Ariz. 189, 192, 598 P.2d 1008, 1011 (App. 1979). We will uphold a denial of special action relief if there is any valid reason to do so. *Id.*

¶11 In this case, the superior court dismissed Salerno's special action complaint, over his objection, without elaboration. Nonetheless, as discussed in ¶¶ 15-16, *infra*, the record reflects ample support for the court's ruling. We therefore decline to remand on this basis.

### **C. Applicability of the Administrative Review Act**

¶12 Salerno next contends that the broad language of the ARA permits review of ADOC decisions relating to the calculation and implementation of sentencing orders. The State counters that judicial review of ADOC's sentencing audit for Salerno is not available because neither the ADOC enabling statutes nor the ARA authorizes such review in this case.

¶13 As a general matter, judicial review of an administrative decision is not available unless the law authorizes such review. *Roer v. Superior Court*, 4 Ariz. App. 46, 46, 417 P.2d 559, 559 (1966). It is undisputed that the statutes governing ADOC, A.R.S. §§ 41-1601 through -1675 (Supp. 2009), do not specifically authorize judicial review of ADOC decisions. Therefore, if review is to be had, authority for it

must be found in the ARA. See *Kimball v. Shofstall*, 17 Ariz. App. 11, 13, 494 P.2d 1357, 1359 (1972) (stating that when enabling statutes are silent as to judicial review, the right of judicial review is found in Arizona's ARA); *Campbell v. Chatwin*, 4 Ariz. App. 504, 509, 421 P.2d 937, 942 (1966), *reversed on other grounds*, 102 Ariz. 251, 428 P.2d 108 (1967) (recognizing that the ARA applies only where the statute relating to the Administrative Agency in question does not otherwise provide).

¶14 The ARA provides for judicial review of any administrative "decision, order or determination of an administrative agency that is rendered in a case, that affects the legal rights, duties or privileges of persons and that terminates the proceeding before the administrative agency." A.R.S. § 12-901(2). It applies to all "final decision[s] of an administrative agency except public welfare decisions pursuant to title 46[.]" A.R.S. § 12-902(A). The ARA, however, limits judicial review to final decisions of administrative agencies rendered in "contested cases."<sup>2</sup> *Rose v. Ariz. Dep't of Corrections*, 167 Ariz. 116, 118-19, 804 P.2d 845, 847-48 (App. 1991). A contested case is one in which "the legal rights, duties or privileges of a party are required by law to be

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<sup>2</sup> It is undisputed that ADOC is an administrative agency for the purpose of this statute and that the decision involved here does not involve a public welfare decision pursuant to Title 46.

determined by an agency after an opportunity for hearing." *Id.* at 119, 804 P.2d at 848 (citing A.R.S. § 41-1001.3 and explaining that although the ARA does not define "contested case," we take guidance from the Administrative Procedure Act, A.R.S. §§ 41-1001 through -1066 (Supp. 2009)).

¶15 The State argues that an inmate letter response setting forth anticipated release and community service dates is not a contested case as contemplated under the ARA; therefore, Salerno cannot rely on the ARA to seek judicial review of the anticipated release dates on record with ADOC. We agree.

¶16 Nothing in the record suggests there was a contested case between Salerno and ADOC that would make judicial review under the ARA applicable. In fact, we are unable to discern that there was a proceeding of any kind between Salerno and ADOC; much less one that included an opportunity for a hearing that resulted in the ADOC rendering a final decision affecting Salerno's legal rights. Instead, the record reflects that Salerno merely requested that ADOC provide him with his anticipated release dates. In response, ADOC audited its records and provided the information Salerno requested. Salerno disagreed with the release dates provided and challenged the calculation of his sentence by requesting post-conviction relief under Rule 32.1 at least five times. Ariz. R. Crim. P. 32.1. As far as the record indicates, Salerno took no steps to seek

review or clarification from ADOC of his release dates. Because there has been no proceeding between Salerno and the ADOC regarding this matter, the superior court lacked jurisdiction under the ARA to review ADOC's interpretation and application of Salerno's sentence as it was not a "decision" issued in a "contested case." *Rose*, 167 Ariz. at 118-19, 804 P.2d at 848-49 (finding that inmate disciplinary hearing is not a "contested case" within the meaning of the administrative review statutes).

¶17 Based on this record, we are satisfied as a matter of law that Salerno would not be entitled to relief on the claims alleged in his complaint because there was no contested case from which he could properly invoke application of the ARA. Further, because we find the ARA does not apply in this case, we need not address the remaining issues Salerno raises relating to application of individual provisions of the ARA.

**CONCLUSION**

¶18 For the foregoing reasons, we affirm the superior court's dismissal of Salerno's complaint.

/s/

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MICHAEL J. BROWN, Judge

CONCURRING:

/s/

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PATRICK IRVINE, Presiding Judge

/s/

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DONN KESSLER, Judge