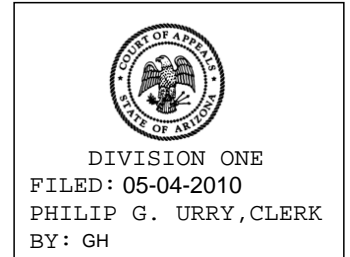


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



KENNETH WAYNE REED,) 1 CA-CV 09-0407
)
Plaintiff-Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
CHARLES L. RYAN, DIRECTOR)
ARIZONA DEPARTMENT OF) (Not for Publication -
CORRECTIONS; CAROL SCOTT; BERTH) Rule 28, Arizona Rules
FRANCO-WILLIS; and OBIE GOINS,) of Civil Appellate Procedure)
)
Defendants-Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. LC 2009-000102-001 DT

The Honorable Andrew G. Klein, Judge

AFFIRMED

Kenneth Wayne Reed, Appellant
In Propria Persona

San Luis

Terry Goddard, Arizona Attorney General
by Michael E. Gottfried, Assistant Attorney General
Liability Management System
Attorneys for Appellees

Phoenix

W E I S B E R G, Judge

¶1 Kenneth Reed appeals from an order of the trial court dismissing his special action complaint. For reasons that follow, we affirm.

PROCEDURAL BACKGROUND

¶2 Reed is an inmate incarcerated at the Arizona State Prison. Pursuant to Arizona Revised Statutes ("A.R.S.") section 31-221(D)(2002), in May and June 2008, Reed made written requests to prison authorities in the Arizona Department of Corrections ("ADOC") to view his automated summary record file ("file"). An "automated summary record file" means a computer printout or generated image that includes the prisoner's:

1. Sentencing and release date calculations.
2. Institutional movements.
3. Disciplinary and rule violations.
4. Detainers and warrants.
5. Institutional work or job history
6. Classification actions.
7. Board of executive clemency hearing actions.

A.R.S. § 31-221(G). With one exception not applicable here, "[a] prisoner shall not make a request to view a copy of the prisoner's own automated summary record file more than one time each year." A.R.S. § 31-221(F).

¶3 ADOC has formulated procedures in Department Order 901.08, § 1.6 for an inmate's yearly review of his file. These include requiring the correctional officer to print a copy of the file, provide it to the inmate in person and destroy the printed copy after the inmate has reviewed it.¹

¹The parties sometimes refer to the AIMS file, which is an acronym for Adult Information Management System, the computerized portion of the Master Record File maintained by ADOC for each inmate.

¶14 After Reed was allowed to review his file in July 2008, Reed filed an inmate grievance appeal in August 2008. He complained that he was only allowed thirty minutes to review the file, that it contained codes that he could not understand, and that certain information allegedly had been withheld from the file. ADOC did not resolve the grievance to his satisfaction, and Reed filed a special action complaint against the director of ADOC and several ADOC employees ("Defendants").

¶15 Reed alleged that when ADOC finally allowed him to review his file, it did not contain all the categories of information listed in A.R.S. § 31-221(G), that it contained special codes and abbreviations rendering the data incomprehensible, and that his prison counselor would not assist him in deciphering the codes. He also alleged that thirty minutes was not sufficient time to review his file, that he was not permitted to obtain a copy of the file printout, even though he offered to pay for it, and that after he reviewed the printout, it was destroyed. He claimed this violated his right to view his file under A.R.S. § 31-221(D). Defendants filed a response and motion to dismiss the complaint for special action. They argued that ADOC had complied with A.R.S. § 31-221 and asked the court to decline jurisdiction and/or to dismiss the complaint.

¶16 The trial court accepted jurisdiction, but denied relief and dismissed the complaint. The court ruled that nothing in A.R.S. § 31-221 authorized a specific amount of time for an inmate to review a file, required ADOC employees to assist an inmate in understanding entries made in it, or allowed the inmate to copy its contents. The court also noted that ADOC's administrative procedures required destruction of the file after the inmate reviewed it. Finally, as to Reed's claim that information was missing from the file, the court observed that Reed had not identified which categories of information were allegedly missing and that it was "not up to this Court to make assumptions to complete the record." The court concluded there was nothing in the record to suggest that ADOC acted arbitrarily, capriciously or abused its discretion and that the way in which ADOC had handled Reed's request to review his file was reasonable.

¶17 Reed timely appealed. We have jurisdiction pursuant to A.R.S. § 12-120.21(A)(1), B)(2003).

DISCUSSION

¶18 On appeal, Reed reiterates the arguments he made in his special action complaint. He adds, however, that nothing in A.R.S. § 31-221 authorizes ADOC to limit the time for viewing a file to thirty minutes. He also claims that his request for a printed copy of the file at his expense was a request for access

to a public record and that A.R.S. § 31-221(C) requires ADOC to honor that request. See A.R.S. §§ 39-121 (2001) and 39-121.01(D)(1) (Supp. 2009)(dealing with inspection and copying of public records). Finally, he contends that in the absence of controverting evidence, the trial court was required to accept as true the assertion that his file did not contain all of the enumerated categories of information. He claims the trial court abused its discretion in denying his request for relief.

Standard of Review

¶19 A special action is appropriate on the question of whether Defendants failed to exercise discretion which they have a duty to exercise or perform a duty required by law or whether Defendants made a determination that was arbitrary and capricious or an abuse of discretion. Ariz. R. Spec. Act. 3(a), (c). "The denial of special action relief is a discretionary decision for the superior court which will be upheld for any valid reason disclosed by the record." *State ex rel. Ariz. Dep't of Econ. Sec.*, 143 Ariz. 341, 345, 693 P.2d 996, 1000 (App. 1985). We view the evidence in the light most favorable to upholding the decision of the administrative agency and will "affirm the decision unless it is arbitrary, capricious, or an abuse of discretion." *Weller v. Ariz. Dep't of Econ. Sec.*, 176 Ariz. 220, 224, 860 P.2d 487, 491 (App. 1993). In reviewing the superior court's ruling upholding an administrative

decision, "we independently examine the record to determine whether the evidence supports the judgment." *Webb v. State ex rel. Ariz. Bd. of Med. Exam'rs*, 202 Ariz. 555, 557, ¶ 7, 48 P.3d 505, 507 (App. 2002). "Neither this court nor the superior court may substitute its judgment for that of the agency on factual questions or matters of agency expertise [but] we apply our independent judgment, however, to questions of law, including questions of statutory interpretation" *Id.* (citations omitted). See also *Kimble v. City of Page*, 199 Ariz. 562, 564, ¶ 9, 20 P.3d 605, 607 (App. 2001) (in reviewing special action decision, "This court may draw its own legal conclusions and is not bound by those of the trial court.").

Interpretation of A.R.S. § 31-221

¶10 The goal of statutory construction is to determine and give effect to the intent of the legislature. *Centric-Jones v. Town of Marana*, 188 Ariz. 464, 468, 937 P.2d 654, 658 (App. 1996). To determine legislative intent, we first look to the words of the statute and if their meaning is clear, we accord the statute its plain meaning. *Id.* "We consider individual provisions in the context of the entire statute." *Burlington N. & Santa Fe Ry. Co. v. Arizona Corp. Comm'n*, 198 Ariz. 604, 607, ¶ 15, 12 P.3d 1208, 1211 (App. 2000). Also, the court may not make additions to a statute that the legislature "deemed unnecessary." *White v. State*, 144 Ariz. 39, 42, 695 P.2d 288,

291 (App. 1985); *Padilla v. Indus. Comm'n*, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976)(court cannot enlarge the meaning of words or rewrite a statute that is clear and unambiguous even if its interpretation is harsh or uncompassionate). Finally, "when a statute is silent or ambiguous, we will give considerable weight to an administrative agency's construction of the statutory scheme which it is entrusted to administer." *State v. Turner*, 175 Ariz. 256, 259, 855 P.2d 442, 445 (App. 1993).

¶11 Here, the language of the statute is clear and unambiguous. An inmate is entitled to review his file containing the seven specified categories once a year. A.R.S. § 31-221 (D), (F), (G). Nothing in the statute requires Defendants to assist the inmate in deciphering codes or abbreviations in the file. Neither does it require ADOC to permit the inmate to review his file for an indefinite period of time. As explained in an inmate response letter from an ADOC employee to Reed dated September 25, 2008, "[a]s we discussed at our meeting, we have limited staff resources . . . and we cannot permit any one inmate to dominate [the correctional officer's] time sacrificing other legitimate inmate services/needs." The correctional officer "followed policy and 30 minutes should have been more than adequate to review your file in accordance with the policy."

¶12 As to Reed's request to photocopy his file, the statute does not afford him such right. This prohibition is consistent with Department Order 901.08, § 1.6.6.4 authorizing destruction of the computerized printout after the inmate has reviewed the file. We reject Reed's contention that he was entitled to photocopy his file under the Arizona public records statutes, A.R.S. §§ 39-121 and 39-121.01. Section 31-221(C) specifies that records of "prisoner care and custody" are subject to the public records statutes. Subsection G enumerates the categories of information available only to the inmate himself. Read together, these sections reflect that the legislature did not intend that information listed in subsection G was subject to public disclosure; only information regarding the care and custody of the prisoner as set forth in subsection C. See also Department Order 901.08, § 1.3 (listing eight specific items constituting public record information).

¶13 Finally, we agree with the trial court's conclusion that Reed has failed to establish which, if any, categories of information under A.R.S. § 31-221(G) were allegedly missing from his file. Reed has not shown that ADOC acted arbitrarily or capriciously in determining the method by which he was permitted to view his file. Further, there is sufficient evidence in the record to support ADOC's procedures and policies implementing A.R.S. § 31-221.

CONCLUSION

¶14 For the foregoing reasons, we affirm the order of the trial court dismissing Reed's special action complaint.

/s/ _____
SHELDON H. WEISBERG,
Presiding Judge

CONCURRING:

/s/ _____
PHILIP HALL, Judge

/s/ _____
JOHN C. GEMMILL, Judge