



DIVISION ONE
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 RUTH A. WILLINGHAM,
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**IN THE
 COURT OF APPEALS
 STATE OF ARIZONA
 DIVISION ONE**

FOX JOSEPH SALERNO,)	1 CA-CV 10-0591
)	
Plaintiff/Appellant,)	DEPARTMENT B
)	
v.)	Maricopa County
)	Superior Court
ARIZONA DEPARTMENT OF CORRECTIONS;)	No. LC2010-000301-001 DT
CHARLES RYAN,)	
)	D E C I S I O N
Defendants/Appellees.)	O R D E R
_____)	

The court, Presiding Judge Peter B. Swann and Judges Daniel A. Barker and Patricia K. Norris, participating, has considered this appeal.

Fox Joseph Salerno, an inmate with the Arizona Department of Corrections ("ADOC"), filed an "Administrative Review Act Complaint" in the Maricopa County Superior Court. He cited the Arizona Administrative Review Act ("ARA"), Arizona Revised Statutes ("A.R.S.") sections 12-901 to -914, as the basis for the superior court's jurisdiction. In his complaint, Salerno requested a review of ADOC's findings in a disciplinary investigation that resulted in Salerno being issued a "disciplinary ticket." The superior court granted ADOC's motion to dismiss Salerno's complaint. The court concluded it lacked "jurisdiction under the Administrative Review Act to review a

decision of the Arizona Department of Corrections finding Defendant guilty of a disciplinary violation."

Arizona law clearly establishes that the ARA does not allow for judicial review of inmate disciplinary decisions by the ADOC. *Rose v. Ariz. Dep't of Corr.*, 167 Ariz. 116, 119-20, 804 P.2d 845, 848-49 (App. 1991). Thus, the superior court correctly dismissed Salerno's complaint on jurisdictional grounds.

We also deny Salerno's request to remand this matter to the superior court for it to consider his complaint as a special action petition. Although the superior court did not expressly address this issue, we find no abuse of discretion in failing to convert the complaint into a special action. Such jurisdiction is "highly discretionary." *State ex rel Thomas v. Duncan*, 216 Ariz. 260, 262, ¶ 4, 165 P.3d 238, 240 (App. 2007). Here, Salerno failed to exhaust ADOC's internal disciplinary appeal process. Additionally, if there is a basis for Salerno's claims (a decision we do not make), they may be asserted under 42 U.S.C. § 1983. Accordingly,

IT IS ORDERED affirming the judgment of the superior court.

DANIEL A. BARKER, Judge