

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

FREDDIE CRESPIAN,
Petitioner/Appellant,

v.

CHARLES RYAN, DIRECTOR OF ARIZONA DEPARTMENT OF CORRECTIONS;
DEPUTY WARDEN R. HILL, APPEALS OFFICER; CAPTAIN P. CRUZ,
DISCIPLINARY HEARING OFFICER,
Respondents/Appellees.

No. 2 CA-CV 2018-0177
Filed November 26, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20181397
The Honorable Janet C. Bostwick, Judge

AFFIRMED

COUNSEL

Law Office of Stacy Scheff, Tucson
By Stacy Scheff
Counsel for Petitioner/Appellant

Mark Brnovich, Arizona Attorney General
By Paul E. Carter, Assistant Attorney General, Tucson
Counsel for Respondents/Appellees

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

ESPINOSA, Judge:

¶1 Appellant Freddie Crespin appeals from the Pima County Superior Court's decision to decline jurisdiction over his special-action petition, involving his underlying complaint against Appellees, Arizona Department of Corrections (ADOC) officers Charles Ryan, R. Hill, and P. Cruz. For the following reasons, we affirm.

Factual and Procedural Background

¶2 In July 2017, Crespin was an inmate at ADOC Safford Complex, and during a search of Crespin's property, prison staff discovered a piece of foil with black residue that tested positive for opiates. Pursuant to a disciplinary hearing, Crespin was found to have possessed drug paraphernalia, in violation of ADOC rules. Cruz, a disciplinary hearing officer, considered the disciplinary report, "[i]nformation [r]eports," investigative reports, copies of physical evidence, and three witness statements in adjudicating Crespin "[g]uilty."

¶3 Crespin administratively appealed, arguing (1) tests of the foil may have yielded positive results "due to contact of another inmate[']s property" or because it was located with religious items, (2) it was not clear whether Cruz had relied on the witness statements Crespin had submitted in reaching the decision, (3) the substance on the foil should have been tested "through [an] outsourced laboratory," and (4) he had been denied procedural due process. Deputy Warden Hill denied relief, finding due process satisfied by Crespin's having been given forty-eight hours written notice of the violation, his opportunity to respond to the charge, and an impartial hearing officer. Hill additionally rejected Crespin's unpersuasive argument that lab results concerning the substance on the foil had not been considered in the finding of guilt. Hill reasoned that ADOC's disciplinary standard of proof required only that it be "more probably true than not that the inmate committed the disciplinary violation" and that Cruz had been "persuaded by the evidence" in rendering the decision.

¶4 Crespin subsequently filed a second-level ADOC administrative appeal, arguing the witness statements he had submitted

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should have exonerated him, and, therefore, Hill must have “failed to properly review and examine all documents in the record.” He further reiterated arguments that the positive test results for opiates could have been from contact with other items and that officials and administrators “failed to [a]cknowledge submission of requested witness statement forms.” The Appeals Unit Administrator found no due process violation, concluded there was adequate evidence to support a finding that Crespin had possessed drugs or narcotics, and upheld the administrative discipline.¹ After Crespin submitted a letter to ADOC objecting to the findings, the ADOC Deputy General Counsel’s responded that Crespin had been “afforded all of the requisite substantive and procedural due process rights during his hearing and on appeal.”

¶5 Seven months after his final disciplinary appeal was denied, in March 2018, Crespin filed a special-action petition in superior court seeking review and relief from the disciplinary proceedings. The court ultimately declined to exercise jurisdiction over Crespin’s special action, noting that he had other remedies at law, standards for special-action review had not been satisfied, and the record contained evidence supporting the administrative actions taken by the defendants; thus, those decisions were not arbitrary, capricious, or an abuse of discretion. The court added “the evidence would not support granting relief based on the law” and “exercising jurisdiction would likely be futile.” The court then entered a final judgment dismissing the action and this appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1). *See State v. Chopra*, 241 Ariz. 353, ¶¶ 4, 8 (App. 2016) (§ 12-2101(A)(1) confers appellate jurisdiction over superior court’s final judgment declining to accept jurisdiction over special action).

Discussion

¶6 The superior court’s decision whether to accept special-action jurisdiction over an administrative appeal is “highly discretionary.”

¹Crespin was originally charged with and found to have possessed drug paraphernalia. This charge was later amended by the Appeals Unit Administrator on second-level appeal to an equivalent charge of possession of drugs or narcotics. Section 9.2.5.1.2 of Arizona Department of Corrections Department Order 803 permits the Director on a second-level appeal to amend a charge to a lesser or equivalent charge without a rehearing.

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See *Rose v. Ariz. Dep't of Corr.*, 167 Ariz. 116, 117, 120-21 (App. 1991) (concluding superior court had discretion to exercise special-action jurisdiction to review inmate disciplinary decision); Ariz. R. P. Spec. Act. 3 bar committee note; see also Ariz. R. P. Spec. Act. 1. Thus, our review of the court's declination of jurisdiction is for an abuse of discretion. *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92 (App. 1979). And, in general, special-action relief is not appropriate when "an equally plain, speedy, and adequate remedy" is otherwise available. Ariz. R. P. Spec. Act. 1(a); see also *Neary v. Frantz*, 141 Ariz. 171, 177 (App. 1984).

¶7 Crespin contends the superior court abused its discretion in declining special-action jurisdiction. He maintains no other remedies were available, there was insufficient "evidence supporting the convictions," he was prejudiced by the lack of evidence supporting the conviction, and he was "denied due process because he was denied the ability to view and confront the evidence against him, specifically the chemical testing that purportedly supported the conviction."

¶8 A prison disciplinary conviction does not require proof beyond a reasonable doubt but instead must simply be "supported by some evidence in the record." *Superintendent v. Hill*, 472 U.S. 445, 454 (1985). This standard is met if "there is any evidence in the record that could support the conclusion reached by the disciplinary board." See *id.* at 455-56. As ADOC points out, the United States Supreme Court declined

to adopt a more stringent evidentiary standard as a constitutional requirement. Prison disciplinary proceedings take place in a highly charged atmosphere, and prison administrators must often act swiftly on the basis of evidence that might be insufficient in less exigent circumstances. The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction, nor any other standard greater than some evidence applies in this context.

Id. at 456 (citations omitted).

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¶9 Here, although Crespin argues he had only been burning sage “for religious purposes,” there was evidence that the foil found in Crespin’s property tested positive for opiates. Crespin does not dispute that he possessed the foil, but argues the lab tests were not properly conducted and he offers alternative explanations for the test result. Even if another test had yielded negative results, however, the original test would remain some evidence that Crespin had possessed opiates. Crespin further contends his subsequent urine test, which was negative for opiates, “tends to show that he was innocent of the charges.” But a negative urinalysis does not invalidate the evidence that Crespin was in possession of opiate residue.

¶10 Crespin cites no legal authority to support his evidentiary contentions. Moreover, in its order declining jurisdiction, the superior court suggested that based on the evidence, Crespin would not have prevailed on the merits of his petition, stating, “exercising jurisdiction would likely be futile.” Because Crespin’s claims are facially insufficient to negate his disciplinary adjudication, the court did not abuse its discretion by refusing to entertain them.²

Disposition

¶11 Because Crespin has failed to show the superior court abused its discretion, its order declining to accept special-action jurisdiction is affirmed.

²Because we affirm on the basis of the superior court’s finding some evidence to support the administrative adjudication, we need not address Crespin’s remaining claims alleging that his defense was prejudiced by a lack of evidence, his liberty interest was implicated, and the court erred in noting he had another available remedy through a previously filed appeal relating to the same underlying facts and disciplinary proceeding.