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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ROBERT ANTHONY RUIZ, Plaintiff/Appellant, v. ARIZONA DEPARTMENT OF CORRECTIONS, Defendant/Appellee.	2 CA-CV 2008-0057 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200702551

Honorable William J. O'Neil, Judge

AFFIRMED

Robert Anthony Ruiz
Douglas
In Propria Persona

Terry Goddard, Arizona Attorney General
By Lisa Parsons
Phoenix
Attorneys for Defendant/Appellee

V Á S Q U E Z, Judge.

¶1 Appellant Robert Ruiz, an inmate in the Arizona Department of Corrections (ADOC), appeals from the superior court's denial of his petition for special action in which he alleged he had been denied due process in a prison disciplinary hearing. For the reasons set forth below, we affirm.

Facts and Procedural Background

¶2 On May 16, 2007, Ruiz was ordered to produce a urine sample to determine whether he had used illegal drugs. In his written disciplinary report of the incident, Corrections Officer Madsen stated Ruiz had been given one hour to produce the sample but failed to do so. He placed Ruiz on "disciplinary report" for disobeying an order, directive, policy, or procedure. Madsen then discussed the incident with the disciplinary coordinator of Ruiz's prison unit, Sergeant Green. After that discussion, Green changed the report to reflect that Ruiz had actually been given two hours to produce a sample. He also corrected the violation code from failure to obey an order to testing positive for or possessing a prohibited drug, consistent with a 2006 change to the rules governing disciplinary proceedings.

¶3 ADOC gave Ruiz formal, written notice of the alleged violation on June 6, 2007. Following a disciplinary hearing on June 13, he was found guilty of the violation and "sentenced to time [already] served" in the "Complex Detention Unit." He filed a disciplinary appeal, which was denied.

¶4 Ruiz then filed a petition for habeas corpus in the Pinal County Superior Court, which the court treated as a petition for special action. In the petition, Ruiz claimed he was

denied due process at his disciplinary hearing because Madsen's initial report, which led to the hearing, had been falsified to state that he had been given two hours to produce a urine sample when the original report stated he had only been given one hour. The court accepted jurisdiction but denied relief, finding "no abuse of discretion" "[b]ecause policy does not preclude the actions that were taken" by the corrections officers.[1] Ruiz timely appealed.

Standard of Review

¶5 We review a superior court's grant or denial of special action relief for an abuse of discretion. *Files v. Bernal*, 200 Ariz. 64, ¶ 2, 22 P.3d 57, 58-59 (App. 2001). To the extent a court's determination is based upon its findings of fact, we defer to such findings absent an abuse of discretion, but we review the court's legal conclusions de novo. *State v. Johnson*, 184 Ariz. 521, 523, 911 P.2d 527, 529 (App. 1994).

Discussion

¶6 We first address Ruiz's argument that he was denied due process under the Fourteenth Amendment to the United States Constitution because his disciplinary hearing was conducted on the basis of "bogus reports."[2] "The touchstone of due process under both

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[1]Although the superior court's ruling is somewhat unclear, in light of language in the minute entry indicating it ruled on the merits of Ruiz's petition, we presume the court accepted special action jurisdiction and denied relief. *See Rose v. Ariz. Dep't of Corrections*, 167 Ariz. 116, 120, 804 P.2d 845, 849 (App. 1991) (prison disciplinary proceedings reviewable by special action, over which trial court has discretion to exercise jurisdiction). And because the court accepted jurisdiction of Ruiz's special action and addressed it on the merits, we likewise address the merits of his claims. *Ayala v. Hill*, 136 Ariz. 88, 90, 664 P.2d 238, 240 (App. 1983).

[2]Ruiz also cites the Eighth Amendment to the United States Constitution as a basis for relief in his opening brief. However, in his complaint below, he argued only that his right

the Arizona and federal constitutions is fundamental fairness." *State v. Melendez*, 172 Ariz. 68, 71, 834 P.2d 154, 157 (1992). However, the due process required in prison disciplinary proceedings is not equivalent to the "full panopoly" of rights afforded to defendants in criminal prosecutions. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974).

¶7 In the disciplinary proceeding context, due process entitles an inmate to: (1) written notice of the charges at least twenty-four hours before he 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 his 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. As long as these requirements are met, a disciplinary proceeding will have satisfied federal due process concerns.

¶8 The state does not dispute on appeal, nor did it below, that Green had made changes to Madsen's original report. However, Green stated he had done so only after the two had discussed the incident and Green had confirmed that Ruiz had in fact been given two hours to produce the urine sample. By finding Ruiz guilty of the violation, the hearing officer implicitly found the changes made to the report were accurate and truthful. The record supports such a finding by the hearing officer, and Ruiz has not demonstrated otherwise. *Files*, 200 Ariz. 64, ¶ 2, 22 P.3d at 58 (trier of fact abuses discretion where record

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to due process had been violated. He has therefore waived any argument that he is entitled to relief under the Eighth Amendment. *State v. LeFevre*, 193 Ariz. 385, ¶ 15, 972 P.2d 1021, 1025 (App. 1998) (failure to present claim to trial court waives appellate review of claim).

"fails to provide substantial support" for its decision); *see also Sigmen v. Ariz. Dep't of Real Estate*, 169 Ariz. 383, 386, 819 P.2d 969, 972 (App. 1991) (hearing officer as trier of fact proper judge of witness credibility).

¶9 Although the trial court did not explicitly address Ruiz's contention that the changes to the report were false, it did find Ruiz had produced no additional facts or arguments entitling him to special action relief. The court concluded Green was authorized by ADOC policy to make changes to disciplinary reports and found he had not abused his discretion in doing so here. Thus, by its ruling, the court also implicitly rejected Ruiz's claim that the report had been falsified. We conclude the court's findings were supported by the record. Ruiz does not otherwise suggest he had been denied due process with respect to the disciplinary hearing.

¶10 He does additionally argue that the trial court erred by not considering evidence under Rules 404 and 406, Ariz. R. Evid., that prison officials routinely falsify disciplinary reports. This evidence apparently consisted of a complaint filed in another superior court case, in which the plaintiffs had made "substantial allegations" that corrections officers in the same prison unit where Ruiz was housed had falsified records. Although Ruiz referred below to the evidence allegedly supporting this contention, he did not advance the same legal argument or cite Rules 404 and 406. It is debatable, therefore, whether he sufficiently preserved this issue for appeal. *See McDowell Mtn. Ranch Land Coalition v. Vizcaino*, 190 Ariz. 1, 5, 945 P.2d 312, 316 (1997) (declining to consider arguments not raised below). Even assuming Ruiz had adequately raised this argument below, it is without merit.

Allegations in a complaint filed in a different case are hearsay and, therefore, inadmissible as evidence for a court to consider. *See FIA Card Svcs. v. Levy*, 545 Ariz. Adv. Rep. 15, n.3 (Ct. App. Dec. 12, 2008); *see also* Ariz. R. Evid. 801 (defining hearsay as out-of-court statement offered to prove truth of matter asserted); Ariz. R. Evid. 802 (hearsay inadmissible unless otherwise excepted). We see no abuse of the trial court's discretion in denying special action relief.

Disposition

¶11 We affirm for the reasons stated above.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge