

ARKANSAS SUPREME COURT

No. 08-75

MORRIS B. KOONTZ

Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION, ET AL.

Appellees

Opinion Delivered

PRO SE APPEAL FROM THE CIRCUIT
COURT OF JEFFERSON COUNTY, CV
2007-494, HON. ROBERT H. WYATT,
JR., JUDGE

AFFIRMED.

PER CURIAM

Appellant Morris B. Koontz, an inmate in the custody of the Arkansas Department of Correction (“ADC”), filed pro se petitions for writ of mandamus and declaratory relief based upon 42 U.S.C. § 1983 (2000), as well as our state civil rights act and constitution, and requesting judicial review of an administrative action in Jefferson County Circuit Court. The circuit court granted a motion by the appellees and dismissed the pleadings without prejudice, citing Ark. R. Civ. P. 12(b)(6), finding the dismissal was a strike under Ark. Code Ann. § 16-68-607 (Repl. 2005).

Appellant brings this appeal of that order in which he contends that the circuit court should not have dismissed the pleadings because the ADC failed to follow its own policies in a proceeding against appellant for disciplinary action. Appellant contends that he is entitled to review of the administrative proceeding, that he is entitled to a declaratory judgment finding that the failure of the ADC to follow its procedures prohibiting alteration of the disciplinary resulted in a violation of his right to due process. Appellant asserts that, as a result of these violations, he was placed in administrative segregation, and suffered a loss of class or custody status and good time credits.

In reviewing the circuit court’s decision on the motion to dismiss, we treat the facts alleged

in the complaint as true and view them in a light most favorable to the plaintiff. *Rhuland v. Fahr*, 356 Ark. 382, 155 S.W.3d 2 (2004). In testing the sufficiency of a complaint on a motion to dismiss, all reasonable inferences must be resolved in favor of the complaint, and all pleadings are to be liberally construed. *Id.* A trial judge must look only to the allegations in the complaint to decide a motion to dismiss. *Fuqua v. Flowers*, 341 Ark. 901, 20 S.W.3d 388 (2000).

Treating the facts alleged in the petition as true, we first determine whether appellant stated facts sufficient to support a cause of action for declaratory judgment. This court has said that declaratory relief lies where four requisite conditions are met, as follows: (1) there is a justiciable controversy; (2) it exists between parties with adverse interests; (3) those seeking relief have a legal interest in the controversy; (4) the issues involved are ripe for decision. *Jegley v. Picado*, 349 Ark 600, 80 S.W.3d 332 (2002). On appeal, the question as to whether there was a complete absence of a justiciable issue shall be reviewed de novo on the record of the trial court. *Id.* at 611, 80 S.W.3d at 336.

The appellees contend that appellant failed to set out sufficient facts in his petition to support a justiciable controversy because he was not entitled to an administrative review. The appellees argue that the circuit court properly dismissed the petition, that is, that the court could not assume jurisdiction so as to reach the merits of the petition, because appellant did not state a constitutional violation to support judicial review of the administrative proceedings.

Administrative agencies, due to their specialization, experience, and greater flexibility of procedure, are better equipped than courts to analyze legal issues dealing with their agencies. *Clinton v. Bonds*, 306 Ark. 554, 816 S.W.2d 169 (1991). In particular, the administration of prisons has generally been held to be beyond the province of the courts. *Id.* Infringement of constitutional

rights, however, is an exception to our general reticence to entertain a prisoner's administrative complaint. *Id.* at 557, 816 S.W.2d 171-172.

In his petition, appellant contended that his right to due process was violated because the ADC did not follow its own procedures. He essentially claimed a liberty interest in having the ADC officials follow those procedures. But, appellant does not have a liberty interest in the actual procedures to be administered. *See Kennedy v. Blankenship*, 100 F.3d 640 (8th Cir. 1996).

To state a case for a substantive due process violation, appellant must have shown an atypical and substantive deprivation that was a dramatic departure from the basic conditions of his confinement. *Id.*; *Sandin v. Conner*, 515 U.S. 472 (1995). As it appears in his petition, appellant's claims of segregation from the general prison population and loss of class status do not indicate a dramatic departure from the basic conditions of his confinement. In Arkansas, there is no liberty interest in good time under the analysis in *Wolff v. McDonnell*, 418 U.S. 539 (1974). *McKinnon v. Norris*, 366 Ark. 404, 231 S.W.3d 725 (2006) (per curiam). The sanctions appellant claimed were imposed in the administrative proceeding did not compromise a liberty interest, and there was therefore no due process violation alleged in the petition to support declaratory judgment. We affirm the circuit court's dismissal of the petition for administrative review and declaratory judgment.

Appellant failed to plead facts necessary to state a cause of action for declaratory judgment, and, as a result, he also failed to state a case supporting the issuance of a writ of mandamus. The purpose of a writ of mandamus is to enforce an established right or to enforce the performance of a duty. *Manila School Dist. No. 15 v. Wagner*, 357 Ark.20, 159 S.W.3d 285 (2004). Appellant based his request for the writ upon the establishment of a right under the declaratory judgment he

requested. In the absence of a basis for declaratory judgment, we also affirm the circuit court's denial of appellant's petition for a writ of mandamus.

Affirmed.

GUNTER, J., not participating.