FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-3652

JAY ALAN MEEKS,

Petitioner,

v.

MARK S. INCH, Secretary,
Florida Department of
Corrections,

Respondent.

Petition for Writ of Certiorari—Original Jurisdiction.

June 10, 2020

PER CURIAM.

The petition for writ of certiorari is denied on the merits.

LEWIS and NORDBY, JJ., concur; B.L. THOMAS, J., concurs with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

B.L. THOMAS, J., concurring.

I concur but write to reiterate my previous view that this Court should reconsider precedent allowing state prisoners *five levels* of review in challenging disciplinary reports within the Department of Corrections. This is both absurd and an abuse of judicial resources, which should be eliminated. I also urge the Florida Supreme Court to consider this issue.

In *Campos v. Department of Corrections*, I stated:

> I concur but write to note that our case law allowing state prisoners to seek certiorari review in this court to challenge prison-disciplinary actions should be reconsidered. In Florida, inmates receive adequate due process in the Department of Corrections' institutional procedures and then further judicial review in the circuit court to challenge disciplinary procedures. This is all that is required under the federal constitution. *Sandin v. Conner,* 515 U.S. 472, 483–84, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995) (liberty interests of inmates protected by due process clause "will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force nevertheless imposes **atypical and significant** hardship on the inmate in relation to the ordinary incidents of prison life") (emphasis added; citations omitted); *Wolff v. McDonnell,* 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) (inmates entitled to advance written notice of the disciplinary charge; an opportunity to call witnesses and present documentary evidence; and a written statement of the evidence relied on in reasons for the disciplinary action). To allow a second level of

judicial review in this court of the inherently executive functions of maintaining prison discipline is without rational and legal justification in my view.

An inmate like Petitioner is entitled to an opportunity to be heard and present evidence during a hearing panel at the institution, further review by the institution's warden, further review by the Secretary of the Department of Corrections, and finally, mandamus review by a circuit court. *Id.*; *Plymel v. Moore*, 770 So. 2d 242 (Fla. 1st DCA 2000). Under *Plymel*, the inmate is then entitled to seek extraordinary relief in this court by certiorari review. Thus, a state prison inmate is allowed **five** layers of review of a prison-disciplinary action. Four layers of review would be more than constitutionally adequate to ensure the Department's actions are proper under *Wolff* and *Sandin.*

The Florida Supreme Court has held that certiorari review in this court is extremely limited, to wit: whether the circuit court, acting in its appellate capacity, provided procedural due process and whether the circuit court applied the correct law. *Fla. Parole Comm'n v. Taylor*, 132 So. 3d 780, 783 (Fla. 2014). Even this narrow review, however, is unnecessary and wasteful of judicial resources where prison-disciplinary issues are raised.

It is rational and appropriate to allow such review of a decision, like in *Taylor*, where a **released inmate** serving a conditional sentence subject to revocation was returned to prison. *Id.*; *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). But in a challenge to a prison disciplinary action, such as this, the United States Supreme Court has properly recognized that states have broad latitude to protect prison safety and institutional control should not engender certiorari review. Further, appellate courts do not possess unlimited resources to engage in unnecessary and duplicative review of a circuit court decision, which further imposes burdens on the executive branch to

> respond to meritless claims by inmates challenging their previous four levels of review of a disciplinary action.
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> The executive branch and the circuit court can fulfill their duty to ensure that a prison disciplinary decision was fair and based on "some evidence" of guilt to support a guilty finding. *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454–55, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985); *Cason v. McDonough*, 943 So. 2d 861 (Fla. 1st DCA 2006) (quoting *Dugger v. Grant*, 610 So. 2d 428, 432 (Fla. 1992)).
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> Nothing in the decisions of the United States Supreme Court or the Florida Supreme Court requires the district courts of appeal to allow judicial review by extraordinary relief of circuit court decisions reviewing executive branch prison disciplinary actions. This Court should consider whether its prior case law allowing prisoners to obtain certiorari review of prison disciplinary actions is grounded in law and a rational allocation of the court's limited judicial resources.

181 So. 3d 553, 554–55 (Fla. 1st DCA 2015) (B.L. Thomas, J., specially concurring) (emphasis in original).

Here, the Petitioner received a disciplinary report, *in 2017*, for "Failure to maintain acceptable hygiene or appearance of housing area," in violation of Rule 33-601.314 (8-2), *Florida Administrative Code*. Petitioner demanded a hearing and received one in which he was allowed to challenge the evidence against him after pleading not guilty to the infraction. He was found guilty and assigned fifteen days in disciplinary confinement. The Department of Corrections did not forfeit any gain time assigned to Petitioner.

Petitioner sought and received review by petition for writ of mandamus in the circuit court. That court denied relief. He now seeks review by petition for writ of certiorari in this Court. As noted, he has not suffered any loss of gain time and, therefore, no liberty interest is at stake by only asserting the loss of the ability to earn gain time. *Wright v. McDonough*, 958 So. 2d 1132, 1133 (Fla. 1st DCA 2007) (citing *Sandin*, 515 U.S. at 484).

We should recede from our precedent that allows state prisoners to seek certiorari review of any state executive-branch action that does not forfeit gain time or impose an "atypical" restraint on the prisoner.

Jay Alan Meeks, pro se, Petitioner.

Ashley Moody, Attorney General, and Leslie A. Healer, Assistant Attorney General, Tallahassee, for Respondent.