



NUMBER 13-16-00438-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**ERBEY FLORES,
TDCJ #00574931,**

Appellant,

v.

BRANDI M. LANDUYT, ET AL.,

Appellees.

**On appeal from the 156th District Court
of Bee County, Texas.**

MEMORANDUM OPINION

**Before Justices Rodriguez, Contreras, and Benavides
Memorandum Opinion by Justice Benavides**

This appeal concerns inmate litigation. By four issues, which we construe as one, appellant Erbey Flores asserts that the trial court erred in dismissing his lawsuit for want of jurisdiction against Brandi Landuyt and Joshua B. Boyer (collectively, the officers), employees of the William P. McConnell Unit of the Texas Department of Criminal Justice (TDCJ) in Beeville. We affirm.

I. BACKGROUND

Flores is currently incarcerated in the TDCJ's McConnell Unit in Beeville. On January 19, 2016, Flores filed a petition in the trial court for judicial review of alleged administrative disciplinary actions taken against him at the McConnell Unit.

According to Flores's petition, in late July 2015, Officer Landuyt accused Flores of masturbating in the showers. Such alleged behavior is a violation of TDCJ policy. As a result of the allegations, TDCJ ordered Flores to appear at a disciplinary hearing to respond. Represented by substitute counsel, Flores pleaded not guilty to the allegations. However, after conducting a 20-minute hearing, the hearing officer found Flores guilty of the allegations and assessed his disciplinary punishment at a 45-day suspension of recreation, commissary, and telephone privileges as well as a 30-day reduction of good-time credit.

On September 8, 2015, Flores filed a Step 1 Offender Grievance Form complaining about the disciplinary action taken, and alleged that the hearing officer was not impartial and acted with "a retaliatory agenda." The prison authority reviewing Flores's grievance denied Flores's Step 1 grievance and found that the charges were appropriate and supported by the evidence. The authority also found that all of the due process requirements were satisfied and that the disciplinary hearing officer acted within agency guidelines. Following the denial of his Step 1 grievance form, Flores filed a Step 2 Offender Grievance Form, where he alleged that his due process rights were violated by his counsel substitute for "not presenting [his] defense as . . . requested." The Step 2 grievance further alleged that the hearing officer did not allow him to cross-examine the

charging officer. The prison authority again sustained the charges and disciplinary action taken. Flores then filed the underlying petition in the trial court.

The State of Texas's Office of Attorney General (OAG) filed an amicus curiae advisory in the trial court requesting that the trial court dismiss Flores's petition because it was: (1) untimely filed under section 14.005(b) of the civil practice and remedies code, see TEX. CIV. PRAC. & REM. CODE ANN. § 14.005(b) (West, Westlaw through Ch. 49, 2017 R.S.); (2) procedurally deficient under sections 14.003(a)(3) and 14.004 of the civil practice and remedies code, see *id.* §§ 14.003(a)(3); 14.004 (West, Westlaw through Ch. 49, 2017 R.S.); and (3) frivolous under section 14.003(a)(2) of the civil practice and remedies code. See *id.* § 14.003(a)(2) (West, Westlaw through Ch. 49, 2017 R.S.).

At the hearing on Flores's petition, the trial court heard arguments from the OAG, which re-urged the arguments laid out in its amicus brief and also asserted that the trial court was without jurisdiction to conduct a de novo review of TDCJ's internal procedures. The trial court likewise heard arguments from Flores, who acted pro se. After the hearing, the trial court dismissed Flores's petition for want of jurisdiction. This appeal followed.

II. DISMISSAL FOR WANT OF JURISDICTION

By four issues, which we construe as one, Flores asserts that the trial court erred by dismissing his petition for want of jurisdiction.

A. Standard of Review

Whether a court has subject matter jurisdiction is a question of law that we review de novo. See *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

B. Discussion

In its amicus brief, the OAG urges us to affirm the trial court's dismissal on grounds that Flores's petition is barred under section 2001.226 of the government code. We agree.

A person may obtain judicial review of an administrative action only if a statute provides a right to judicial review or the action adversely affects a vested property right or otherwise violates a constitutional right. *Harrison v. Tex. Dep't of Crim. Justice, Inst'l Div.*, 164 S.W.3d 871, 876 (Tex. App.—Corpus Christi 2005, no pet.) (citing *Cont'l Cas. Ins. Co. v. Functional Restoration Assocs.*, 19 S.W.3d 393, 397 (Tex. 2000)). More specifically, the Texas Government Code allows a party to seek a trial de novo, as Flores seeks in this case, in certain decisions made by state agencies. See TEX. GOV'T CODE ANN. § 2001.173 (West, Westlaw through Ch. 49, 2017 R.S.) (outlining procedures for review authorized by trial de novo); *but see id.* § 2001.174 (West, Westlaw through Ch. 49, 2017 R.S.) (outlining procedures for review authorized by substantial evidence rule or undefined scope of review). However, relevant to this appeal, section 2001.226 states the following:

This chapter does not apply to a rule or internal procedure of the Texas Department of Criminal Justice or Texas Board of Criminal Justice that applies to an inmate or any other person under the custody or control of the department or to an action taken under that rule or procedure.

Id. § 2001.226 (West, Westlaw through Ch. 49, 2017 R.S.).

The essence of Flores's petition complains of internal TDCJ disciplinary proceedings instituted against him pursuant to procedures outlined by TDCJ internal policy. Section 2001.226 expressly and specifically limits the scope of judicial review to exclude judicial review of such actions taken by TDCJ regarding an inmate such as Flores. See *id.*; *Harrison*, 164 S.W.3d at 876. As a result, Flores is without statutory recourse in this case to invoke the trial court's jurisdiction.

Although Flores is without statutory recourse, he could still seek judicial review of the action if it adversely affects a vested property right or otherwise violates a constitutional right. See *id.* However, none of the complained-about actions alleged by Flores involve violations of constitutional rights reviewable by judicial review. Among the disciplinary proceedings instituted by TDCJ in this case included loss of Flores's commissary, recreation, and telephone privileges. However, changes in the conditions of an inmate's confinement such as losing certain privileges do not implicate due process concerns. See *Hamilton v. Williams*, 298 S.W.3d 334, 341 (Tex. App.—Fort Worth 2009, pet. denied); see also *Wilke v. Tex. Dep't of Crim. Justice-C.I.D.*, No. 13-11-00698-CV, 2012 WL 2936273, at *1 (Tex. App.—Corpus Christi 2012, pet. dismissed w.o.j.). Liberty interests that are protected by the Fourteenth Amendment are those which present an atypical or significant hardship in relation to ordinary prison life. See *Sandin v. Conner*, 515 U.S. 472, 484 (1995); see also *Kennedy v. Keith*, No. 04-99-00100-CV, 2000 WL 31865 (Tex. App.—San Antonio 2000, no pet.). None of the allegations made by Flores present the type of “atypical or significant hardship” standard which could constitute a liberty interest and thereby grant the trial court subject-matter jurisdiction.

Because Flores failed to meet the requisites to obtain judicial review, we overrule his four issues.

III. CONCLUSION

We affirm the trial court's judgment.

GINA M. BENAVIDES,
Justice

Delivered and filed the
17th day of August, 2017.