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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

CHARLES RATHBUN,

Plaintiff and Appellant,

v.

KATHLEEN ALLISON, as Warden, etc. et al.,

Defendants and Respondents.

F062537

(Super. Ct. No. 11C0077)

**OPINION**

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

Charles Rathbun, in pro. per., for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

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**INTRODUCTION**

Appellant Charles Rathbun is an inmate at the California Substance Abuse Treatment Facility (SATF) in Corcoran. He filed a petition for writ of mandate in the Kings County Superior Court alleging that the inmate appeals analyst at SATF, L. Zinani, improperly refused to process his inmate appeal. The superior court denied Rathbun's petition. The court ruled that Zinani did not violate title 15, section 3084.3 of the

California Code of Regulations<sup>1</sup> by rejecting Rathbun’s November 11, 2010, appeal.<sup>2</sup> Rathbun now appeals to this court, and again argues that his inmate appeal was improperly rejected. As we shall explain, the trial court properly denied Rathbun’s petition. Unlike the superior court, however, we need not reach the question of whether section 3084.3 was violated. Rathbun’s writ petition clearly demonstrates that he failed to exhaust his available administrative remedies and that he therefore was not entitled to any relief.

An inmate appeal may be rejected when “[t]he appeal issue is obscured by pointless verbiage or voluminous unrelated documentation such that the reviewer cannot

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<sup>1</sup> All further undesignated section references are to title 15 of the California Code of Regulations.

<sup>2</sup> When Rathbun submitted his inmate appeal in November of 2010, section 3084.3, subdivision (c) stated: “Rejection Criteria. An appeal may be rejected for any of the following reasons: [¶] ... [¶] (8) The appeal constitutes an abuse of the appeals process pursuant to section 3084.4.” Section 3084.4, entitled “Appeal System Abuse,” stated in pertinent part in subdivision (c): “Excessive verbiage. Appeals in which the grievance or problem cannot be understood or is obscured by pointless verbiage or voluminous unrelated documentation shall be rejected ....” Section 3084.2 stated in pertinent part: “(a) Form requirement. The appellant shall use a CDC Form 602 (rev. 12-87), Inmate Parolee Appeal Form, to describe the problem and action requested.... [¶] (1) A limit of one continuation page, front and back, may be attached to the appeal to describe the problem and action requested in sections A and B of the form. [¶] (2) Only supporting documentation necessary to clarify the appeal shall be attached to the appeal.” Rathbun’s appeal utilized the CDC Form 602 and the one continuation page, but also included, in addition to these, his own declaration, which appears even to us to have been largely duplicative of what was contained in Rathbun’s form 602 and his one continuation page. The appeals coordinator and superior court, appear to have viewed Rathbun’s declaration as an attempt to avoid the section 3084.2 page limitations, and thus as “pointless verbiage or voluminous unrelated documentation” (§ 3084.4, subd. (c)) and thus “an abuse of the appeal process pursuant to section 3084.4” (§ 3084.3, subd. (c)(8)). We need not and do not here determine whether the appeals coordinator and the superior court correctly interpreted the regulations. As we explain in the text of the opinion, Rathbun is not entitled to a writ of mandate directing the Department to accept his appeal because he was required to exhaust his available administrative remedies and he refused to do so, even though he was expressly invited to do so by the appeals coordinator.

be reasonably expected to identify the issue under appeal.” (§ 3084.6, subd. (b)(9).)<sup>3</sup> When, as here, an inmate’s appeal is initially rejected and the inmate is given “clear and sufficient instructions regarding further actions the inmate or parolee must take to qualify the appeal for processing” (§ 3084.6, subd. (a)(1)), the inmate’s remedy is to follow those instructions so as to have the appeal processed.<sup>4</sup> If the inmate’s appeal is unsuccessful at the first level of review, and the inmate contends that the first appeal was unsuccessful because the first level reviewer refused to accept for consideration documents which the first level reviewer deemed unnecessary and which the inmate deemed appropriate “supporting documents” (§§ 3084.2, subd. (b), 3084, subd. (h)), the inmate may ask the second level reviewer to consider the documents the first level reviewer refused to consider.<sup>5</sup> An inmate who instead resorts immediately to court after his or her first level

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<sup>3</sup> Section 3084.6, subdivision (b), presently states in pertinent part: “An appeal may be rejected for any of the following reasons [¶] ... [¶] (9) The appeal is obscured by pointless verbiage or voluminous unrelated documentation such that the reviewer cannot reasonably be expected to identify the issue under appeal.” As we mentioned in footnote 1, *ante*, when Rathbun submitted his inmate appeal in November of 2010, comparable language was found in the former section 3084.4, subdivision (c).

<sup>4</sup> Again, the quoted language is from the current section 3084.6, subdivision (a)(1), which states that when an appeal is rejected “the appeals coordinator shall provide clear and sufficient instructions regarding further actions the inmate or parolee must take to qualify the appeal for processing.” At the time of Rathbun’s inmate appeal, comparable language was found in the former section 3084.3, subdivision (d), which stated: “Written rejection. When rejecting an appeal, the appeals coordinator shall complete an Appeals Screening Form, CDC Form 695 (rev. 5-83), explaining why the appeal is unacceptable. If rejection is based upon improper documentation, the form shall provide clear instructions regarding further action the inmate must take to qualify the appeal for processing.” As we mentioned in footnote 1, *ante*, and will describe in more detail in the text of this opinion, Rathbun chose to ignore those instructions. He instead filed a petition for writ of mandate in superior court.

<sup>5</sup> The current section 3084.2, subdivision (b)(1) states in pertinent part: “Only supporting documents, as defined in subsection 3084(h), necessary to clarify the appeal shall be attached to the appeal.” At the time of Rathbun’s inmate appeal, comparable language was found in the former section 3084.2, subdivision (a)(2), which [fn. cont.]

inmate appeal is screened out is improperly attempting to avoid the administrative process that was established for the inmate's own benefit.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Rathbun's petition alleged as follows. The SATF "Facility 'D'" law librarian, Susan Killen, initiated a policy of forbidding physical access to the Facility D law library for inmates "whose work days and hours are Tuesday-Saturday, 8:00 a[.]m[.] to 3:30 p[.]m." Rathbun has a "work assignment" on those days and during those hours. His days off are Sunday and Monday. The library is closed on Sunday and Monday. Killen has made available a "paging system" for inmates whose regular days off are Sunday and Monday. The paging system is designed to provide inmates with "requested statutes, regulations, and court case law" when those inmates cannot physically visit the library and locate those materials themselves. Appellant views the paging system as unsatisfactory. The paging system was operated by "untrained Inmates" and "it has taken appellant more than thirty (30) days in unsuccessfully attempting to obtain materials inmates with physical access were able to obtain within mere minutes."

On November 11, 2010, he filed an inmate appeal on a standard "Form 602" seeking a return to the "previous" policy of allowing inmates with Sunday and Monday regular days off to have physical access to the law library "with their work supervisor's

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stated: "Only supporting documentation necessary to clarify the appeal shall be attached to the appeal." At the time of Rathbun's inmate appeal, there was no definition of "supporting documents" in the regulations. Now there is. That definition is found in section 3084, subdivision (h) (referred to in § 3084.2, subd. (b)(1), as "subsection 3084(h)") and states: "Supporting documents means documents that are needed to substantiate allegations made in the appeal including, but not limited to, classification chronos, property inventory sheets, property receipts, disciplinary reports with supplements, incident reports, notifications of disallowed mail, trust account statements, memoranda or letters, medical records and written requests for interviews, items or services. Supporting documents do not include documents that simply restate the matter under appeal, argue its merits, or introduce new issues not identified in the present appeal form."

permission, during work hours.” A Form 602 provides only eight lines in its part “A” to “Describe the Problem,” but Rathbun utilized the optional additionally permitted page (see § 3084.2, subd. (a)) to describe in more detail his dissatisfaction with the paging system and to present argument as to why the paging system deprived him of “meaningful access to the courts.” (Full capitalization omitted.) Attached to the Form 602 and its optional additional page were three declarations. One was a declaration of Rathbun himself. It appears to be largely duplicative of the content of part “A” of his Form 602 and its attached page, although the declaration goes into more detail about Rathbun’s experiences in attempting to use the paging system, and particularly in attempting to obtain copies of a particular case (*Belmontes v. Brown* (9th Cir. 2005) 414 F.3d 1094) and a particular article of a “Department Operations Procedures Manual.” Another was a declaration of inmate Waymon M. Berry III, who stated that “after less than five (5) minutes of Library Access on October 26, 2010,” he was able to locate both the *Belmontes* case and the article. Berry also declares that he was a “regular user” of the library and that “the Inmate Workers[] assigned [to the library] have a very limited knowledge of legal books and materials ....” The third declaration was that of inmate Daniel Masterson. It was very similar to Berry’s declaration, except that it took Masterson “only five (5) to ten (10) minutes” to find the *Belmontes* case and a particular section of the article of the Department Operations Procedures Manual.

On December 1, 2010, Rathbun’s appeal was returned to him with a “Form 695” screening form stating:

“The enclosed documents are being returned to you for the following reasons:

***“A limit of one continuation page, front and back, may be attached to the appeal to describe the problem and action requested in sections A and B of the CDC Form 602. CCR 3084.2(a)(1). Remove unnecessary documents and resubmit.*”**

***“The CDC 602 Sections A, B and one attachment page is for listing the problem and action requested. The declaration you have attached is restating the facts listed in your appeal. Remove excessive documents.”***  
(Original emphasis.)

Rathbun submitted a “Motion for Reconsideration” to Zinani on or about December 5, 2010. On or about December 9, he received another Form 695 stating:

“The enclosed documents are being returned to you for the following reasons:

***“A limit of one continuation page, front and back, may be attached to the appeal to describe the problem and action requested in sections A and B of the CDC Form 602. CCR 3084.2(a)(1). Remove unnecessary documents and resubmit.***

***“Your appeal has been appropriately screened out. Comply with instructions on the CDC 695 Screening Form dated 12/1/10.”*** (Original emphasis.)

Instead of complying with the instructions on the December 1, 2010, Form 695 Screening Form, Rathbun filed his petition in the superior court on February 14, 2011. The court denied the petition in an order dated March 17, 2011, which stated in pertinent part:

“IT IS HEREBY ORDERED, the petition is denied. Former California Code of Regulations, title 15, Section 3084.2, subdivision (a)(1) expressly provided for the attachment of only one descriptive continuation page, front and back, to a CDC Form 602 Inmate/Parolee Appeal. Although former California Code of Regulations, title 15, Section 3084.3, subdivision (c)(5) allowed for the screening of a CDC Form 602 Inmate/Parolee Appeal based upon a failure to attach “necessary supporting documents,” this court declines to apply Petitioner’s overbroad interpretation of such provision. An interpretation of former California Code of Regulations, title 15, Section 3084.3, subdivision (c)(5) which would allow inmates to attach all evidence of their claim to their CDC Form 602 Inmate/Parolee Appeal, would effectively nullify the one-page limitation set forth in former California Code of Regulations, title 15, Section 3084.2, subdivision (a)(1). Accordingly, Respondent’s narrow interpretation of “necessary supporting documents” as referred to in former California Code of Regulations, title 15, Section 3084.3, subdivision (c)(5), appears to be reasonable, rational and in accord with the

discretionary power granted to California Department of Corrections and [Rehabilitation] personnel in connection with their daily operation and management of prison facilities. Furthermore, Petitioner certainly invited the non-processing of his Appeal by his repeated refusal to resubmit his CDC Form 602 Inmate/Parolee Appeal without the attached Declaration.” (Fn. omitted.)

### **STANDARD OF REVIEW**

“A writ of mandate will lie to ‘compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station’ (Code Civ. Proc., § 1085) ‘upon the verified petition of the party beneficially interested,’ in cases ‘where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.’ (Code Civ. Proc., § 1086.) The writ will issue against a county, city, or other public body or against a public officer. [Citations.] However, the writ will not lie to control discretion conferred upon a public officer or agency. [Citations.] Two basic requirements are essential to the issuance of the writ: (1) A clear, present and usually ministerial duty upon the part of the respondent [citations]; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty [citation].” (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 490-491, fn. omitted.) “Mandate will not issue to compel action unless it is shown ‘the duty to do the thing asked for is plain and unmingled with discretionary power or the exercise of judgment.’ [Citation.]” (*Hutchinson v. City of Sacramento* (1993) 17 Cal.App.4th 791, 796.)

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

“Under a regulation promulgated by the [California] Department [of Corrections and Rehabilitation], a prison inmate may appeal any departmental decision, action, condition, or policy adversely affecting the inmate’s welfare. (§ 3084.1, subd. (a); Pen. Code, § 5058; [*In re Muszalski* (1975)] 52 Cal.App.3d [500,] at pp. 506-508; [*In re Thompson* (1975)] 52 Cal.App.3d [780,] at p. 783.) [¶] This administrative appeal process generally consists of four levels of review: an informal review followed

successively by three formal reviews. (§ 3084.5, subds. (a)-(e).)” (*Wright v. State of California* (2004) 122 Cal.App.4th 659, 666.)

In California “‘exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts.’” (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 84-85.) “The requirement that administrative remedies be exhausted ‘applies to grievances lodged by prisoners.’ [Citations.]” (*In re Dexter* (1979) 25 Cal.3d 921, 925; in accord, see also *In re Muszalski, supra*, 52 Cal.App.3d at p. 508; *In re Thompson, supra*, 52 Cal.App.3d at p. 783; *In re Serna* (1978) 76 Cal.App.3d 1010, 1014; and *Wright v. State of California, supra*, 122 Cal.App.4th at pp. 665-666.)

Rathbun clearly did not exhaust his administrative remedies. We note that in addition to pursuing his next level of review, which he chose not to do, Rathbun could have submitted another Form 602 inmate grievance directly contending that he should have been allowed to present what he contends is proper supporting documentation. This could have been done using nothing more than a Form 602 itself, in which Rathbun could explain what the documents were that he wished to submit with his original 602 and why he contends that submission of those documents with his original 602 was proper.

We also observe that the Form 695 Rathbun received on December 1, 2010, stated in part “[t]he declaration you have attached is restating the facts listed in your appeal.” (Emphasis omitted.) The word “declaration” is singular. Although neither of the two Form 695 screening letters Rathbun received is a model of clarity, it is possible that the only documents the appeal screener deemed to be “unnecessary documents” were the four pages comprising Rathbun’s own declaration, which appear to be nothing more than an attempt to evade the requirement that “[t]he inmate or parolee is limited to the space provided on the Inmate/Parolee Appeal form and one Inmate/Parolee Appeal Form Attachment to describe the specific issue and action requested.” (§ 3084.2, subd. (a)(2).) As the trial court correctly observed, if an inmate were permitted to submit his own declaration whenever the inmate wished to do so, the limitations provided for in section

3084.2 would be effectively nullified. Because Rathbun never removed his own declaration and resubmitted his 602 without that declaration, we have no way of knowing whether the screener would have considered such a revised submission appropriate for processing.

**DISPOSTION**

The order denying appellant's petition for writ of mandate is affirmed.

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Franson, J.

WE CONCUR:

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Dawson, Acting P.J.

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Kane, J.