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

DEMIAN JOHNSON,
Plaintiff and Respondent,

v.

R. MOJICA,
Defendant and Appellant.

H042496
(Monterey County
Super. Ct. No. M117706)

I. INTRODUCTION

Respondent Demian Johnson filed a petition for a writ of mandate compelling appellant R. Mojica, the appeals coordinator for Salinas Valley State Prison, to provide a second level response to Johnson’s appeal of the finding that he was guilty of a serious rule violation. It was undisputed that there had been a lengthy delay in responding to Johnson’s appeal and that prison officials had lost or misplaced his original appeal and supporting documents.

The trial court entered judgment in Johnson’s favor and issued a peremptory writ of mandate commanding Mojica to (1) “Reverse the guilt finding of CDCR Form 115, Rule Violation Report (RVR), Log No. A11-09-0013;” (2) “Dismiss the Charge of said RVR;” (3) “Expunge said RVR and guilt finding from [Johnson’s] Central file;” and (4) file a return to the writ “showing what you have done to comply with this Writ within sixty (60) days of entry of the Judgment.”

On appeal, Mojica contends that the trial court erred because the petition for writ of mandate became moot after Johnson was allowed to resubmit his appeal and prison officials responded through the third and final level of review. Mojica also contends that the trial court lacked authority to issue a writ of mandate compelling him to reverse the guilt finding on the serious rule violation and expunge all related records from Johnson's central file. For the reasons stated below, we agree and therefore we will reverse the judgment and vacate the peremptory writ of mandate.

II. FACTUAL AND PROCEDURAL BACKGROUND

In 1983, Johnson pleaded guilty and was convicted of second degree murder (Pen. Code, § 187). He was sentenced to 15 years to life in the state prison, in the custody of the department now known as the California Department of Corrections and Rehabilitation (CDCR).

A. Rules Violation Report

By 2011 Johnson was serving his sentence at Salinas Valley State Prison. In September 2011 the prison officials issued a CDC 115 rules violation report¹ to Johnson that stated he had violated California Code of Regulations, title 15, section 3005, subdivision (a)² by the act of over-familiarity with staff. The staff member involved was the law librarian, who had reported to prison officials that she received a letter in the "library box" on September 1, 2011, that she believed Johnson had written. The letter was "very offensive and over-familiar" and mentioned an interest in Buddhism, which

¹ "According to the California Code of Regulations, a CDC 115 [rules violation report] documents misconduct believed to be a violation of law which is not minor in nature. A form 128 documents incidents of minor misconduct. [Citation.]" (*In re Gray* (2007) 151 Cal.App.4th 379, 389.)

² California Code of Regulations, title 15, section 3005, subdivision (a) states: "Inmates and parolees shall obey all laws, regulations, and local procedures, and refrain from behavior which might lead to violence or disorder, or otherwise endangers facility, outside community or another person."

the law librarian had previously discussed with Johnson. The law librarian felt that Johnson was attempting to establish an over-familiar relationship with her.

As stated in the rules violation report, prison staff obtained letters from Johnson's central file and compared the handwriting on those letters to the handwriting on the letter that the law librarian had received. They "verified" that the handwriting on the subject letter was Johnson's handwriting. The law librarian further reported to prison officials that she was uncomfortable with Johnson remaining in the facility and requested that he be transferred.

The rules violation report also included the prison investigator's summaries of the statements of Johnson and the law librarian regarding the alleged rules violation. Johnson stated that the subject letter to the law librarian was not in his handwriting and denied saying, doing, or writing anything that was an attempt to establish an over-familiar relationship with her. The law librarian acknowledged having a lengthy discussion about Buddhism with Johnson and denied having a discussion about Buddhism with any other inmate. She also answered several questions that Johnson had requested be posed to her by the prison investigator.

During the hearing on the alleged rules violation, the law librarian appeared as a witness at Johnson's request. However, Johnson agreed to accept the prison investigator's report "as stipulated testimony for [the law librarian]" and did not ask any further questions.

On October 17, 2011, prison officials found that Johnson was guilty of the rules violation of over-familiarity with staff and as a consequence had forfeited 30 days of conduct credits and lost certain privileges. Johnson was transferred to Pleasant Valley State Prison in December 2011.

B. Appeal of CDC 115 Rules Violation Report

The record reflects that on November 15, 2011, Johnson submitted a CDCR form 602 administrative appeal of the 2011 CDC 115 rules violation report. The

November 15, 2011 inmate appeal assignment notice stated that Johnson's appeal had been assigned to Mojica for a second level response and the due date for the response was December 29, 2011.

On January 5, 2012, Johnson submitted an inmate request noting that the due date for the second level response to his administrative appeal had passed and requesting a response. The request was returned to Johnson with a staff response stating that his appeal was completed on December 29, 2011, and he would receive a response "via mail."

On February 9, 2012, Johnson resubmitted the inmate request form with a request for a supervisor review, stating that he had not received the second level response. By March 2012 Johnson still had not received the second level response and had been advised by a correctional counselor that the second response was not in his central file. On March 27, 2012, the supervisor responded that "[t]his issue is not within the jurisdiction of Pleasant Valley State Prison. You must contact [Salinas Valley State Prison] in order to resolve this matter."

C. Petition for Writ of Mandate

On May 14, 2012, Johnson filed a petition for writ of mandate pursuant to Code of Civil Procedure sections 1085 and 1086 naming as respondent "R. Mojica, Appeals Coordinator at Salinas Valley State Prison." The relief sought was a peremptory writ of mandate "ordering Respondent to return to [Johnson] his CDCR-602 (Log# SVSP-L-11-02545) and all supporting documents, along with a written second level response to the appeal." Alternatively, Johnson requested an order declaring that he had exhausted his administrative remedies, "given [Mojica's] failure to provide a timely second level appeal response and the extraordinary amount of time that has passed since the response was due, and given the fact that CDCR regulations do not provide instructions on how to address [Mojica's] inaction." The petition did not raise any issue as to the merits of the 2011 CDC 115 rules violation report.

Mojica filed an answer to the petition for writ of mandate in which he agreed with the chronology of Johnson's CDCR 602 appeal as set forth in the petition. However, Mojica denied "that prison officials can return to Johnson his CDCR-602 concerning appeal log number SVSP-L-11-02545 or the second level response because the documents are not in his central file and cannot be located. Instead, [Mojica] alleges that Johnson may resubmit a 602 inmate appeal concerning the same prison discipline to the SVSP appeals office, and a second level review will be sent to him at [Pleasant Valley State Prison] with the original copy of his resubmitted 602 inmate appeal." Mojica asserted that the petition was moot because Johnson would be provided with the relief he sought—review of his inmate grievance regarding prison discipline—after he resubmitted his CDCR 602 appeal. Mojica denied that Johnson was entitled to an order declaring that he had exhausted his administrative remedies, contending that prison officials should be allowed to process Johnson's appeal.

D. Interim Trial Court Proceedings

A hearing on the petition for writ of mandate was held on November 16, 2012. The trial court's November 16, 2012 minute order directed Johnson "to resubmit his appeal that is the issue of today's hearing and have it filed and processed in the normal course." The court continued the hearing on the petition for writ of mandate to March 8, 2013.

In the meantime, Johnson filed a "renewed motion for judicial declaration that petitioner's administrative remedies have been exhausted," which was dated February 6, 2013. In his accompanying declaration, Johnson stated that he had resubmitted his CDCR 602 appeal on December 5, 2012, in compliance with the trial court's order, but he had not received a second level response from prison officials. Due to the lengthy delay in receiving the second level response and the loss of the "crucial supporting documents" that were attached to his original CDCR 602, Johnson requested a declaration that his administrative remedies had been exhausted or, alternatively, an order

dismissing the underlying CDC 115 rules violation report and expunging all related documents from his central file.

The trial court denied the motion in the March 8, 2013 minute order, which states: “[Johnson’s] Renewed Motion for Judicial Declaration that [his] Administrative Remedies Have Been Exhausted is **denied** without prejudice. [¶] This executed minute order shall be deemed the Order after Hearing.”

E. Completion of CDCR 602 Appeal Process

As noted, Johnson resubmitted his CDCR 602 appeal on December 5, 2012. He stated in his appeal that the original supporting documents that had been lost with his original CDCR 602 appeal included a “personal letter” from the law librarian “that refutes the CDC-115 [rules violation report].” He argued that the due process violations that warranted reversal of the CDC 115 rules violation report included lack of evidence of guilt and prison officials’ denial of his right to have the law librarian attend the hearing.

Prison officials issued a second level response to Johnson’s CDCR 602 appeal on March 4, 2013. The response noted that the rules violation report showed that Johnson had agreed to accept the report as the stipulated testimony of the law librarian. However, the response also noted that credits had been forfeited although “time constraints were not met.” The second level decision partially granted Johnson’s appeal by modifying the rules violation report to reflect zero credit forfeiture. The guilt finding was upheld.

Thereafter, Johnson submitted a third level appeal that was rejected as incomplete. Johnson resubmitted the third level appeal on May 10, 2013, with his signature and the tabs removed, as requested by prison officials. On August 2, 2013, the third level appeal was denied on the grounds that there was “sufficient evidence to support the guilty finding, and that the determination of the [hearing officer] was reasonable based on the testimony of staff.”

F. Further Trial Court Proceedings

In September 2013, Mojica attempted to file in the trial court a “request for ruling and entry of judgment.” Mojica asserted in the request that Johnson’s CDCR 602 appeal had been processed, and therefore Johnson had received the relief requested in his petition for writ of mandate. The trial court returned the request as unprocessed.

Johnson submitted opposition to Mojica’s “request for ruling and entry of judgment,” arguing that the request should be denied and he was entitled to an ex parte order expunging the rules violation report from his prison files due to prison official’s extensive delay in processing his appeal. Johnson also argued that he was “unable to provide evidence to a reviewing court” that the law librarian had reported him in order to cover up her own inappropriate conduct, because prison officials had lost the “personal, intimate letters” that the librarian had written to him. Additionally, Johnson asserted that the rules violation report could cause him to be denied parole at his next parole board hearing.

Mojica’s subsequent effort to file a “request for ruling and entry of judgment” was also returned unfiled by the trial court. However, Johnson filed a second opposition to the “request for ruling and entry of judgment,” in which Johnson sought an “injunction” reversing the guilt finding in the rules violation report, expunging all related documents from his prison files, and awarding costs. He again asserted that prison officials had delayed the appeals process and lost the supporting documents that were necessary to his appeal.

Mojica filed a reply in which he argued that the petition for writ of mandate was moot because Johnson had received the relief requested, which was a second level response to his CDCR 602 appeal. Mojica also briefly argued that Johnson’s request for expungement of his rules violation report and an award of costs “lack[s] merit.”

G. Ruling

The trial court issued a ruling dated January 5, 2015, granting Johnson's "renewed motion for an injunction ordering the expun[gement] of rules violation report." The ruling included the trial court's reasoning in granting the motion.

At the outset, the trial court rejected Johnson's contentions that the rules violation report was based on false or unsubstantiated evidence and the delay in the appeal process had prevented him from presenting an adequate defense. The trial court determined that the court nevertheless had the authority to grant the relief sought by Johnson, based on California Code of Regulations, title 15, section 3326, subdivision (a)(2).

The trial court further determined that a writ of mandate would lie to correct a public official's abuse of discretion, and found that Mojica's "refusal to reverse the [rules violation report's] guilty finding and expunge [Johnson's] record is arbitrary and capricious. [Johnson] has shown prejudice in his inability to proffer evidence in support of his defense."

The trial court also determined that the principles of justice and fairness required relief by way of mandate, even though Johnson had originally sought a writ compelling Mojica to comply with his ministerial duty by responding to Johnson's appeal. The court found that a change of circumstances had occurred when Mojica revealed in his answer to the petition that Johnson's original appeal and "only copy of supporting documents was 'lost or misplaced,' over nine months after the response to the appeal was due."

For these reasons, the trial court ruled that it was appropriate to order the CDCR's "appeals staff to expunge the [rules violation report] and related guilt finding." The court also awarded Johnson his costs.

On January 26, 2015, Mojica filed a motion for an order vacating the trial court's January 5, 2015 ruling and denying the petition for writ of mandate. The basis for the motion was Mojica's discovery that Johnson had admitted guilt for the rules violation during his December 5, 2013 parole hearing. Mojica requested judicial notice of the

reporter's transcript of the December 5, 2013 parole hearing, which showed that Johnson had expressly admitted writing the letter to the law librarian that was the subject of the CDC 115 rules violation report, and that Johnson knew he should not have engaged in over-familiarity with staff. Therefore, according to Mojica, "regardless of whether the librarian sent Johnson any letters, [the] evidence indicated Johnson responded with an overfamiliar letter of his own."

The record reflects that the trial court denied the motion to vacate the January 5, 2015 ruling on the grounds that Mojica had failed to demonstrate that the decision was inconsistent with or unsupported by the facts. No order was included in the record on appeal.

H. Judgment and Writ of Mandate

The judgment entered on March 27, 2015, ordered a peremptory writ of mandate to issue; required Mojica to file a return in 60 days; and awarded costs to Johnson.

The writ of mandate dated March 27, 2015, states that the petition for writ of mandate is granted and commands Mojica to (1) "Reverse the guilt finding of CDCR Form 115, Rule Violation Report (RVR), Log No. A11-09-0013;" (2) "Dismiss the Charge of said RVR;" (3) "Expunge said RVR and guilt finding from [Johnson's] Central file;" and (4) file a return to the writ "showing what you have done to comply with this Writ within sixty (60) days of entry of the Judgment."

III. DISCUSSION

On appeal, we understand Mojica to contend that the judgment should be reversed because (1) the petition for writ of mandate is moot; and (2) the trial court lacked authority to issue a writ of mandate compelling Mojica to reverse the guilt finding on Johnson's CDC 115 rules violation report and to expunge the rules violation report and guilt finding from Johnson's central file. We will begin our analysis of these contentions with an overview of the remedy of a writ of mandate and its application to inmate appeals.

A. Writ of Mandate

A traditional writ of mandate lies “to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station. . . .” (Code Civ. Proc., § 1085, subd. (a); *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.) Under Code of Civil Procedure section 1086, “[t]he writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.”

Thus, “a writ of ordinary mandate will lie when (1) there is no plain, speedy and adequate alternative remedy, (2) the public official has a legal and usually ministerial duty to perform and (3) the petitioner has a clear and beneficial right to performance. [Citation.]” (*Menefield v. Foreman* (2014) 231 Cal.App.4th 211, 216-217 (*Menefield*)). “ ‘A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his [or her] own judgment or opinion concerning such act’s propriety or impropriety, when a given state of facts exists.’ [Citation.]” (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916.)

The CDCR’s regulations provide an administrative appeals process with three levels of review for inmate’s CDCR 602 appeal of grievances, including prison discipline. (Cal. Code Regs., tit. 15, §§ 3084.1, subd. (b), 3084.8, subd. (c).) Each level of review has a specified deadline. (Cal. Code Regs., tit. 15, § 3084.8, subd. (c);³ *In re Andres* (2016) 244 Cal.App.4th 1383, 1393-1394 (*Andres*) [outlining inmate appeal process]; *Villery v. Department of Corrections & Rehabilitation* (2016) 246 Cal.App.4th

³ “All appeals shall be responded to and returned to the inmate or parolee by staff within the following time limits, unless exempted pursuant to the provisions of subsections 3084.8(f) and (g): [¶] (1) First level responses shall be completed within 30 working days from date of receipt by the appeals coordinator. [¶] (2) Second level responses shall be completed within 30 working days from date of receipt by the appeals coordinator. [¶] (3) Third level responses shall be completed within 60 working days from date of receipt by the third level Appeals Chief.” (Cal. Code Regs., tit. 15, § 3084.8, subd. (c).)

407, 416, fn. 5 (*Villery*) [time limits for the three levels of response to an inmate grievance].) Therefore, prison officials have a legal duty to process inmate appeals submitted on a CDCR 602 form in accordance with the time limits set forth in California Code of Regulations, title 15, section 3084.8, subdivision (c). (See, e.g., *Villery, supra*, at pp. 410-411; *Menefield, supra*, 231 Cal.App.4th at p. 217.) This legal duty involves ministerial tasks. (See *Villery, supra*, at p. 410; *Menefield, supra*, at p. 217.)

Accordingly, “[t]he ordinary way to compel the [CDCR] to process inmate grievances as required by its own regulations is a writ of mandate, not a writ of habeas corpus. [Citation.]” (*Villery, supra*, 246 Cal.App.4th at p. 411; see also *Kao v. Department of Corrections & Rehabilitation* (2016) 244 Cal.App.4th 1326, 1331-1332 [petition for writ of mandate compelling CDCR to process a disciplinary appeal]; *Menefield, supra*, 231 Cal.App.4th at p. 217 [petition for writ of mandate to compel processing of inmate appeal at the formal level]; *Wright v. State of California* (2004) 122 Cal.App.4th 659, 667-668 [remedy for unreasonable delay in third level formal review of inmate appeal is a writ of mandate ordering completion of review].)

The standard of review is well established: “When reviewing a trial court’s judgment on a petition for ordinary mandate, we apply the substantial evidence test to the trial court’s findings of fact and exercise our independent judgment on legal issues, such as the interpretation of statutory or regulatory requirements. [Citation.]” (*Menefield, supra*, 231 Cal.App.4th at p. 217; see also *Fry v. City of Los Angeles* (2016) 245 Cal.App.4th 539, 549 [same].)

B. Mootness

We next address the threshold issue of whether the petition for writ of mandate is moot. Mojica argues that the petition is moot because Johnson has received all of the writ relief he sought when he was allowed to resubmit his CDCR 602 appeal of the CDC 115 rules violation report and received review of his resubmitted appeal through

a timely third level response. Johnson does not directly address the mootness issue in his respondent's brief.

“[A] case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief. [Citation.]” (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454.) In other words, it is the duty of every judicial tribunal “ ‘to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.’ ” [Citation.]” (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541 (*Eye Dog Foundation*).)

We agree with Mojica that the petition for writ of mandate is moot because there is no longer any actual controversy regarding the writ relief that Johnson sought in his petition for writ of mandate. In May 2012, Johnson expressly sought a peremptory writ of mandate “ordering [Mojica] to return to [Johnson] his CDCR-602 (Log# SVSP-L-11-02545) and all supporting documents, along with a written second level response to the appeal.” Alternatively, Johnson requested an order declaring that he had exhausted his administrative remedies, “given [Mojica’s] failure to provide a timely second level appeal response and the extraordinary amount of time that has passed since the response was due, and given the fact that CDCR regulations do not provide instructions on how to address [Mojica’s] inaction.”

It is undisputed that prison officials lost or misplaced Johnson’s original CDCR 602 appeal of the CDC 115 rules violation report and original supporting documents, as Mojica acknowledged in his answer to Johnson’s petition for writ of mandate. However, in November 2012 the trial court ordered Johnson “to resubmit his appeal that is the issue of today’s hearing and have it filed and processed in the normal course.” Johnson resubmitted his CDCR 602 appeal in December 2012 and received a second level response in March 2013 that partially granted his appeal by by modifying

the rules violation report to reflect zero credit forfeiture. Thereafter, Johnson submitted a third level appeal to which he received a response in August 2013 denying the appeal because there was “sufficient evidence to support the guilty finding, and that the determination of the [hearing officer] was reasonable based on the testimony of staff.”

Thus, in March 2013 Johnson received the second level response that he had sought in his petition for writ of mandate. In August 2013 Johnson had exhausted his administrative remedies, because completion of the third level response constitutes exhaustion of administrative remedies. (Cal. Code Regs., tit. 15, § 3084.1, subd. (b) [all appeals are subject to a third level of review before administrative remedies are deemed exhausted].

Since Johnson had received all of the writ relief that he had sought in his petition for writ of mandate—a second level response to his CDCR 602 appeal and exhaustion of administrative remedies—by August 2013, at that time there was no longer any actual controversy as to whether Johnson had received the administrative appeals process to which he was entitled under CDCR regulations or whether his administrative remedies were exhausted. (See *Eye Dog Foundation, supra*, 67 Cal.2d at p. 541; see *Andres, supra*, 244 Cal.App.4th at pp. 1393-1395.) Absent an actual controversy, we determine that the trial court should have denied Johnson’s petition for writ of mandate as moot.

C. Lack of Authority

Even assuming for purposes of argument that the petition is not moot, we would find as a matter of law that the trial court lacked authority to issue the peremptory writ of mandate.

In its January 5, 2015 ruling, the trial court granted Johnson’s “renewed motion for an injunction ordering the expun[gement] of rules violation report.” The trial court determined that the court had the authority to grant the relief sought by Johnson, based on California Code of Regulations, title 15, section 3326, subdivision (a)(2) (hereafter, section 3326, subdivision (a)(2)). The trial court further determined that a writ of

mandate would lie to correct a public official's abuse of discretion, and found that Mojica's "refusal to reverse the [rules violation report's] guilt finding and expunge [Johnson's] record is arbitrary and capricious. [Johnson] has shown prejudice in his inability to proffer evidence in support of his defense."

Although the trial court recognized that Johnson had originally sought a writ of mandate compelling Mojica to comply with his ministerial duty by responding to Johnson's CDCR 602 appeal, the court found that prison officials' conduct in losing or misplacing Johnson's original CDCR 602 appeal and supporting documents and delaying a second level response warranted relief by way of mandate under the "principles of justice and fairness."

Mojica contends that the trial court erred because section 3326, subdivision (a)(2) does not impose a mandatory duty on prison officials, and therefore the regulation did not authorize the court to issue of writ of mandate compelling prison officials to expunge Johnson's rules violation report and the guilt finding.

Johnson concedes that section 3326, subdivision (a)(2) does not mandate that prison officials expunge the rules violation report and guilt finding from his central file. Johnson argues, however, that "the Court's decision rests on its determination that it was an abuse of discretion to refuse to take these actions in light of the delay in responding to [his] appeal, loss of the only copies of crucial documents in support of the appeal and the prejudice [he] suffered as a result."

We will independently determine whether the trial court erred in its interpretation of section 3326, subdivision (a)(2). "Generally, the rules that govern interpretation of statutes also govern interpretation of administrative regulations. [Citations.]" (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1097.) "In interpreting a statute, we begin with its text, as statutory language typically is the best and most reliable indicator of the Legislature's intended purpose. [Citations.] We consider the ordinary meaning of the language in question as well as the text of related provisions,

terms used in other parts of the statute, and the structure of the statutory scheme.

[Citations.]” (*Larkin v. Workers’ Comp. Appeals Bd.* (2015) 62 Cal.4th 152, 157-158.)

At the time of the trial court’s 2015 ruling, former California Code of Regulations, title 15, section 3326, subdivision (a)(1) and (2) stated in pertinent part: “Upon conclusion of disciplinary proceedings, all documents relating to the disciplinary process, findings, and disposition shall be disposed of in the following manner: [¶] (1) When an inmate is held responsible for the act charged, copies of all documents prepared for and used in the disciplinary proceedings shall be placed in the inmate’s central file. . . . [¶] (2) When the inmate is found not guilty of the act charged or when the charge is dismissed for any reason, the documents prepared for and used in the disciplinary process shall not be placed in any file pertaining to the inmate.”

Former California Code of Regulations, title 15, section 3326 was part of the regulatory scheme for prison discipline administered by the CDCR. (See former Cal. Code Regs., tit. 15, § 1310 et seq.) Applying the rules governing the interpretation of regulations, we determine that the plain language of former California Code of Regulations, title 15, section 3326, subdivision (a)(1) and (2) mandated that prison officials not place the documents that were used in the prison disciplinary process in the inmate’s file only where the CDCR’s disciplinary proceedings concluded with prison officials either finding the inmate not guilty or dismissing the charge.

Here, the record reflects that prison officials did not either find Johnson not guilty of the CDC 115 rules violation of over-familiarity with staff or dismiss the charge at the conclusion of disciplinary proceedings. To the contrary, prison officials upheld the guilt finding through the third level of review. Therefore, under former California Code of Regulations, title 15, section 3326, subdivision (a)(2), prison officials did not have a mandatory duty to reverse the guilt finding, dismiss the CDC 115 rules violation report, and expunge Johnson’s CDC 115 rules violation report from his central file. For that

reason, the trial court was not authorized by former California Code of Regulations, title 15, section 3326, subdivision (a)(2) to issue a writ compelling them to do so.

We therefore agree with the parties that the trial court erred in interpreting section 3326, subdivision (a)(2) to provide authority for granting Johnson's motion for expungement and issuing a peremptory writ of mandate compelling prison officials to (1) "Reverse the guilt finding of CDCR Form 115, Rule Violation Report (RVR), Log No. A11-09-0013;" (2) "Dismiss the Charge of said RVR;" (3) "Expunge said RVR and guilt finding from [Johnson's] Central file;" and (4) file a return to the writ "showing what you have done to comply with this Writ within sixty (60) days of entry of the Judgment."

We recognize that the trial court also relied on decisions that authorize a trial court to correct a public official's abuse of discretion by writ of mandate, and that the trial court found that Mojica had abused his discretion because prison officials had lost or misplaced Johnson's CDCR 602 appeal and supporting documents. However, the decisions relied upon by the trial court, *Sanders v. City of Los Angeles* (1970) 3 Cal.3d 252 (*Sanders*) and *Rhyne v. Municipal Court* (1980) 113 Cal.App.3d 807 (*Rhyne*), are distinguishable and do not stand for the proposition that a petition for writ of mandate to compel compliance with the CDCR's administrative appeals process may be impliedly treated as a petition seeking review of the merits of the guilt finding in a CDC 115 rules violation report.

In *Sanders*, city employees had obtained a writ of mandate regarding their entitlement to prevailing salary and wages, and the primary issue before the California Supreme Court was whether the defendants had properly complied with the writ. (*Sanders, supra*, 3 Cal.3d at pp. 261-263.) The *Sanders* court determined that substantial evidence supported the lower courts' finding that "the procedures used by the defendants in 1963 and 1968 in determining the prevailing wage and salary increases due was unreasonable and unfair." (*Id.* at p. 261.) In so ruling, the *Sanders* court noted that "[t]he

courts will interfere by mandamus when the action taken by the board is ‘so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law.’ [Citations.]” (*Ibid.*)

In *Rhyne*, the superior court issued a peremptory writ of mandate commanding the municipal court to furnish prearrestment counseling attorneys to persons charged with crimes that could result in confinement. (*Rhyne, supra*, 113 Cal.App.3d at p. 812.) The municipal court appealed the judgment granting the writ of mandate, arguing, among other things, it did not have a duty that could be enforced by a writ of mandate. (*Id.* at p. 819.) The appellate court determined that the municipal court had abused its discretion in failing to afford defendants their constitutional right to the assistance of counsel, and therefore a writ of mandate was “the appropriate remedy to compel the performance by the Municipal Court of its constitutionally imposed duty.” (*Id.* at p. 821.)

We reiterate that under Code of Civil Procedure section 1086, a writ of mandate issues only where “there is not a plain, speedy, and adequate remedy, in the ordinary course of law.” There is an adequate remedy in the ordinary course of law for inmate challenges to prison discipline after the exhaustion of administrative remedies: a writ of habeas corpus. (See, e.g., *In re Jackson* (1987) 43 Cal.3d 501, 504, fn. 1 [petition for writ of habeas corpus challenging rule violation based on confidential information]; *In re Gomez* (2016) 246 Cal.App.4th 1082, 1086 [petition for a writ of habeas corpus challenging to sufficiency of evidence for serious rule violation]; *In re Scott* (2003) 113 Cal.App.4th 38, 40 [petition for a writ of habeas corpus challenging classification of rule violation as serious].)⁴

For these reasons, we conclude that the trial court lacked authority to issue a peremptory writ of mandate directing Mojica to reverse the guilt finding on Johnson’s

⁴ We express no opinion regarding any petition for a writ of habeas corpus that Johnson may file.

CDC 115 rule violation report, dismiss the charge, expunge said rules violation report and guilt finding from Johnson's central file, and file a return to the writ. Having also concluded that the trial court should have denied the petition for writ of mandate as moot, we will reverse the judgment and vacate the peremptory writ of mandate.

IV. DISPOSITION

The judgment is reversed and the peremptory writ of mandate dated March 27, 2015, is vacated. The parties shall bear their own costs on appeal.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.