MEMORANDUM DECISION

APPELLANT PRO SE

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ATTORNEY FOR APPELLEES

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IN THE COURT OF APPEALS OF INDIANA

James E. Manley,
Appellant,

v.

Eric Lowe, et al.,
Appellees

July 20, 2022

Court of Appeals Case No. 21A-PL-1073

Appeal from the Henry Circuit Court

The Honorable Kit C. Crane, Judge

Trial Court Cause No. 33C02-2009-PL-000044

May, Judge.

[1] James E. Manley, pro se, appeals the trial court's dismissal of the "Civil Action for Mandate" (Appellant's App. at 12 (full capitalization removed)) that Manley filed against Eric Lowe and Tyrone Thompson (hereinafter "Defendants") in their official capacity as Disciplinary Hearing Officers of the Conduct Adjustment Board at New Castle Correctional Facility. Defendants moved to dismiss Manley's action under Trial Rule 12(B)(1) for the trial court's lack of subject matter jurisdiction and under Trial Rule 12(B)(6) for Manley's failure to state sufficient facts to create a claim upon which any relief could be granted. The trial court granted dismissal on both grounds. Manley raises two issues on appeal, which we restate as:

> 1. Whether the trial court had jurisdiction over Manley's request for mandate, such that dismissal under Trial Rule 12(B)(1) was inappropriate; and
>
> 2. Whether Manley's request for mandate stated a claim for relief sufficient to avoid dismissal under Trial Rule 12(B)(6).

We affirm.

Facts and Procedural History

[2] At all times relevant to this appeal, Manley resided in the New Castle Correctional Facility (hereinafter "the Facility") and Defendants were Disciplinary Hearing Officers for the Conduct Adjustment Board at the Facility. Manley's filings indicate he was subject to twenty-three separate disciplinary proceedings, but the only information he has provided about the

facts or circumstances prompting, or occurring during, each of those proceedings is what appears to be a disciplinary case number. (Appellant's App. Vol. II at 16-19.) On December 28, 2020, Manley filed a civil action for mandate against Defendants and a memorandum of law in support of the civil action for mandate. According to Manley's mandate complaint:

> 5. [Defendants] have failed to comply with the requirements of *Ind. Code* §§ 11-11-5-5(a); 35-50-6-5(b), and 35-50-6-4(f) (2020) when they where [sic] under a duty to act prior to imposing any sanctions upon [Manley] in disciplinary actions. These rights provided for by the above statutory provisions are protected by the Ind. Constitution, Art. 1 § 12, which guarantees the right to judicial review of state laws where prison officials have imposed arbitrary forms of disciplinary punishments in direct violation of these statutes.
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> 6. [Defendants] have failed to comply with the requirements of *Ind. Code* § 34-13-9-8 (2020) when they were under a dut [sic] to act prior to imposing any restrictions upon [Manley's] religious rights, which includes the right to assert during an administrative proceeding a defense that the administrative action would place a substantial burden upon [Manley's] exercise of religion as guaranteed by *Ind. Constitution*, Art. 1 § 2 and *Ind. Code* § 34-13-9-9 (2020).
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> 7. The failure to act by [Defendants] when they were under a duty to act has been raised in the administrative agency.
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> 8. The denial of this petition will result in extreme hardship because [Manley] was sanctioned to loss of privileges, demoted credit classes, and deprived earned credit time.

> 9. There is no other adequate remedy at law available to [Manley].

(*Id*. at 13) (errors & italics in original) (formatting altered). In his memorandum of law in support of his complaint, Manley reiterated his points of law and listed twenty-three disciplinary case numbers, indicating his request that the trial court "void all proceedings" and "explunge [sic] all reference to the proceedings from [Manley's] prison record." (*Id*. at 16-19.)

[3] On February 18, 2021, Defendants filed a joint motion to dismiss. The motion first asserted dismissal is appropriate under Indiana Trial Rule 12(B)(1) for lack of subject matter jurisdiction because our Indiana Supreme Court, in *Blanck v. Ind. Dep't of Corr.*, 829 N.E.2d 505 (Ind. 2005), held prisoners do not have a private right of action to enforce in court the statutes Manley cited. Defendants also asserted dismissal of Manley's complaint was appropriate under Indiana Trial Rule 12(B)(6) because the "complaint is entirely void of any factual allegation relative to how any of these laws have been infringed upon." (Appellant's App. Vol. II at 26.) The Defendants further asserted "Plaintiff has failed to provide notice of any alleged facts which would allow the Defendants to even speculate as to how the Plaintiff's rights have been ignored in a prison disciplinary matter." (*Id*.)

[4] Manley filed a response to the motion to dismiss in which he asserted:

> 3. The Respondents acknowledge the operative facts alleged in the Civil Action for Mandate are that the Respondents have failed to comply with the requirements of Indiana Code 11-11-5-

> 5. The Respondents make no reference to the allegation that they failed to comply with the requirements of Indiana Code 35-50-6-5 and Indiana Code 35-50-6-4.
>
> 4. These statutes impose a specific duty to act upon the Respondents, a fact not disputed by the Respondents.
>
> 5. As a result of the Respondents' failure to act when they were under a duty to act has resulted in extreme hardship to the Realtor in the form of loss of privileges, demoted credit classes, and deprived earned credit time, facts not disputed by the Respondents.

(*Id*. at 28-29.) Manley further argued:

> The Relator is not required to provide evidentiary facts in the complaint. Moreover, the evidentiary facts sought by the Respondents are contained in the Relator's institutional packet maintained by the Respondents [sic] employer, and are also contained in the pleadings for case number 33C02-1510-PL-67, a case involving the Respondents [sic] employer The GEO Group, Inc. who is represented by Mr. Sickmann's law partner, Adam G. Forrest.

(*Id*. at 32.) On May 2, 2021, the trial court granted Defendants' motion to dismiss under Indiana Trial Rule 12(B)(1) and 12(B)(6).

Discussion and Decision

[5] As an initial matter, we note Manley proceeds in his appeal pro se. Litigants who proceed pro se are held to the same established rules of procedure that trained counsel is bound to follow. *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind.

Ct. App. 2009), *trans. denied*, *cert. dismissed* 558 U.S. 1074 (2009). One risk a litigant takes when proceeding pro se is that he will not know how to accomplish all the things an attorney would know how to accomplish. *Id.* When a party elects to represent himself, there is no reason for us to indulge in any benevolent presumption on his behalf or to waive any rule for the orderly and proper conduct of his appeal. *Foley v. Mannor*, 844 N.E.2d 494, 502 (Ind. Ct. App. 2006).

[6] Manley's complaint was a civil action for mandate filed pursuant to Indiana Code section 34-27-3-1, which states:

> An action for mandate may be prosecuted against any inferior tribunal, corporation, public or corporate officer, or person to compel the performance of any:
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> (1) act that the law specifically requires; or
>
> (2) duty resulting from any office, trust, or station.

Judicial mandate is "'an extraordinary remedy, viewed with extreme disfavor.'" *Price v. Ind. Dept. of Child Servs.*, 80 N.E.3d 170, 174 (Ind. 2017) (quoting *State ex re. Civil City of South Bend v. Court of Appeals of Indiana - Third Dist.*, 273 Ind. 551, 553, 406 N.E.2d 244, 245 (1980)). Accordingly, it "should 'never [be] granted in doubtful cases.'" *Id.* at 175 (quoting *Burnsville Turnpike Co. v. State ex rel. McCalla*, 119 Ind. 382, 385, 20 N.E. 421, 422 (1889)).

[7] Judicial mandate should be granted only when a plaintiff can demonstrate two elements: (1) "the defendant bears an imperative legal duty to perform the ministerial act or function demanded[,]" *id*., and (2) "plaintiff 'has a clear legal right to compel the performance of [that] specific duty.'" *Id*. (quoting *City of Auburn v. State ex rel. First Nat. Bank of Chicago*, 170 Ind. 511, 528-29, 83 N.E. 997, 1003 (1908)). For judicial mandate to be granted, the legal duty imposed on a defendant cannot be a "generalized duty." *Id*. Rather, it must be a "specific duty" to "'do' or 'perform' something." *Id*. In addition, the specific act required must be ministerial. *Id*. at 176.

> A ministerial act is non-discretionary - "one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act being done."

Id. (quoting *Flournoy v. City of Jeffersonville*, 17 Ind. 169, 174 (1861)).

[8] The specific, ministerial act requirement defines not only the duty imposed by law on the defendant but also defines the breadth of a court's ability to mandate an act be performed. "Because ministerial acts are those done only pursuant to law, in a fixed manner, in specific circumstances, and without discretion, they necessarily cannot be elaborated upon." *Id*. "Courts do not have license to define or prescribe a duty to act." *Id*. Nor can a court "expound upon what particular act a duty compels; it can only command performance of an existing duty required by law." *Id*.

[9] Manley's complaint requested mandate regarding decisions made as part of a prison disciplinary process. In his complaint he contends Defendants violated Indiana Code section 11-11-5-5(a), which governs disciplinary actions in the Department of Correction; Indiana Code sections 35-50-6-4 and 35-50-6-5, which concern offender credit time issues that occur after prison disciplinary actions; and Indiana Code sections 34-13-9-8 and 34-13-9-9 and the Indiana Constitution Article 1, section 2, all of which concern the free exercise of religion. The trial court first concluded Manley's request for mandate should be dismissed under Trial Rule 12(B)(1) for lack of subject matter jurisdiction.

[10] "The lack of subject matter jurisdiction may be raised as an affirmative defense either in the answer to the complaint or in a motion to dismiss." *GKN Co. v. Magness*, 744 N.E.2d 397, 403-04 (Ind. 2001) (citing Ind. Trial Rules 8(C) & 12(B)(1)). Generally speaking, the party challenging a court's jurisdiction has "the burden of establishing that jurisdiction does not exist." *Id*. at 404. When, as here, the relevant facts are not in dispute, subject matter jurisdiction is a question of law that we review de novo. *Citizens Action Coal. of Ind. v. Koch*, 51 N.E.3d 236, 240 (Ind. 2016). "Likewise, when reviewing a final judgment, we review all conclusions of law de novo." *Berry v. Crawford*, 990 N.E.2d 410, 414 (Ind. 2013).

[11] We note the Henry Circuit Court is a court of general jurisdiction and, as such, has the power to hear a mandate action. *See Price*, 80 N.E.3d at 173 (Ind. 2017) ("the Marion Superior Court, as a court of general jurisdiction, is empowered to hear Price's mandate action and, were such relief warranted under applicable

law and facts, to order it"); *and see* Ind. Code § 33-29-1-1.5(1) (all standard superior courts have "original and concurrent jurisdiction in all civil cases and in all criminal cases.").

[12] However, our Indiana Supreme Court held in *Blanck* that not all actions are subject to that general jurisdiction. In that case, Blanck sought judicial review of a decision to discipline him for misconduct while in prison. *Blanck*, 829 N.E.2d at 507. Blanck alleged Indiana Code section 11-11-5-5 entitled him to judicial review of the relevant prison disciplinary action. *Id*. At the onset of its opinion, our Indiana Supreme Court gave a brief overview of prior decisions on the issue:

> For a quarter-century, our Court has held that DOC inmates have no common law, statutory, or federal constitutional right to review in state court DOC disciplinary decisions. This was the holding of Justice DeBruler's opinion for a unanimous court in *Riner v. Raines*, 274 Ind. 113, 409 N.E.2d 575 (1980). We reaffirmed the holding of *Riner* in Justice Prentice's opinion in *Adams v. Duckworth*, 274 Ind. 503, 412 N.E.2d 789 (1980); in Chief Justice Shepard's opinion in *Hasty* [*v. Broglin*, 531 N.E.2d 200 (Ind. 1988)] in 1988; and, most recently, in Justice Dickson's opinion in *Zimmerman v. State*, 750 N.E.2d 337 (Ind. 2001).

Id. (emphasis added). Our Indiana Supreme Court noted Indiana Code section 11-11-5-5, along with the other related statutes for which Blanck sought judicial review, did not contain "any provision suggesting that inmates have the right to enforce any such rights in court." *Id*. at 509. The Court stated:

> Sometimes the Legislature will be quite explicit in providing that persons with appropriate standing are entitled to go to court and ask for enforcement of a statute's provisions. These provisions are often referred to as "private rights of action" or "private causes of action." . . . And where a legislative body does not explicitly provide a private right of action to enforce the provisions of a particular statute, courts are frequently asked to find that the Legislature intended that a private right of action be implied.

Id. (internal citations omitted). The Court then examined the legislature's intent as is relevant to prison disciplinary decisions:

> The Indiana Administrative Orders and Procedures Act, Indiana Code Sections 4-21.5-1-1 through 4-21.5-7-9 ("AOPA"), governs the orders and procedures of state administrative agencies, including the DOC. Chapter 5 of the AOPA "establishes the exclusive means for judicial review of an agency action," Ind. Code § 4-21.5-5-1 (2004), including agency action highly analogous to the disciplinary action challenged in this case. But as the State points out, the Legislature has specifically excluded from the AOPA's application any "agency action related to an offender within the jurisdiction of the department of correction." I.C. § 4-21.5-2-5(6). We conclude that the clear intent of the Legislature here is to deny to inmates charged with or found guilty of misconduct the procedure specified in the AOPA, including judicial review. And with the intent of the Legislature on this point being clear, we are not free to infer a private right of action.
>
> We further conclude that whatever doubt the statutes may leave as to whether inmate discipline decisions are subject to judicial review is resolved in the negative because of the long period of legislative acquiescence to our decisions to that effect. As noted above, these decisions date back to *Riner* and *Adams* in 1980. The

> topic has also been addressed with great frequency by our federal court colleagues - a LEXIS search indicates that well over 100 such cases have been reported. "[T]he failure of the Legislature to change a statute after a line of decisions of a court of last resort giving the statute a certain construction, amounts to an acquiescence by the Legislature in the construction given by the court, and that such construction should not then be disregarded or lightly treated." *Miller v. Mayberry*, 506 N.E.2d 7, 11 (Ind. 1987) [superseded by statute on other grounds] (citing cases).

Id. at 510.

[13] Thus, under *Blanck*[1] it would seem the review of the portions of Manley's action regarding violations of Indiana Code sections 35-50-6-4, 35-50-6-5, 34-13-9-8 and 34-13-9-9 and the Indiana Constitution Article 1, section 2, would require review of the relevant prison disciplinary decisions and thus dismissal pursuant to Indiana Trial Rule 12(B)(1) was appropriate. However, in *Kimrey v. Donahue*, 861 N.E.2d 379 (Ind. Ct. App. 2007), *trans. denied*, a panel of this court interpreted our Indiana Supreme Court's holding in *Blanck* and stated, "We garner from the Blanck decision that trial courts lack subject matter jurisdiction over such complaints unless an explicit private right of action is

[1] Manley also contends he is entitled to mandate pursuant to Indiana Constitution Article 1, section 12, often called the Open Courts Clause. In *Blanck*, our Indiana Supreme Court held Blanck was not entitled to judicial review of the prison disciplinary decisions based on the Indiana Constitution Article 1, Section 12, or the Open Courts Clause, stating, the "Open Courts Clause requires that where a cause of action has been created (by constitution, statute, or common law), courts must be open to provide remedy by due course of law." *Id*. at 511. Thus, because Blanck did not have a cause of action under the statutes listed in his complaint, including Indiana Code section 11-11-5-5, the Open Courts Clause did not apply. *Id*. Based on *Blanck*, Manley does not have an action under Article 1, section 12 of the Indiana Constitution because he does not have a private right of action for review of prison disciplinary decisions.

afforded by statute or an allegation is made that constitutional rights are being violated." *Id*. at 382. Therefore, because Manley's allegations regarding Indiana Code sections 35-50-6-4, 35-50-6-5, 34-13-9-8 and 34-13-9-9 were not allegations of a violation of constitutional rights, they were properly dismissed pursuant to Indiana Trial Rule 12(B)(1) because they required a review of a prison disciplinary decision, which is impermissible under *Blanck*. However, based on the language in *Kimrey*, the trial court erred when it dismissed Manley's constitutional claim under Article 1, section 2 of the Indiana Constitution pursuant to Indiana Trial Rule 12(B)(1).

[14] The trial court also dismissed Manley's request for mandate pursuant to Indiana Trial Rule 12(B)(6) for failure to state a claim on which relief could be granted. A dismissal under Indiana Trial Rule 12(B)(6) "tests the legal sufficiency of the complaint." *Price*, 80 N.E.3d at 173. Under this Rule, a court may dismiss a complaint it fails to "state a claim on which relief could be granted." *Robertson v. State*, 141 N.E.3d 1224, 1227 (Ind. 2020).

> Indiana Trial Rule 8(A), this state's notice pleading provision, requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Although the plaintiff need not set out in precise detail the facts upon which the claim is based, she must still plead the operative facts necessary to set forth an actionable claim. Under notice pleading, we review the granting of a motion to dismiss for failure to state a claim under a stringent standard, and [we] affirm the trial court's grant of the motion only when it is "apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances."

Trail v. Boys & Girls Clubs of NW Ind., 845 N.E.2d 130, 135 (Ind. 2006) (internal citations omitted). Indiana has a liberal notice pleading standard such that "a pleading need not adopt a specific theory of recovery to be adhered to throughout the case. *ARC Constr. Mgmt., LLC v. Zelenack*, 962 N.E.2d 692, 697 (Ind. Ct. App. 2012).

[15] "A complaint states a claim on which relief can be granted when it recounts sufficient facts that, if proved, would entitle the plaintiff to obtain relief from the defendant." *Bellwether Props., LLC v. Duke Energy Ind., Inc.*, 87 N.E.3d 462, 466 (Ind. 2017). When ruling on a motion to dismiss pursuant to Indiana Trial Rule 12(B)(6), "courts are required to view the complaint in the light most favorable to the non-moving party and with every inference in its favor." *Medley v. Lemmon*, 994 N.E.2d 1177, 1182 (Ind. Ct. App. 2013) *reh'g denied*, *trans. denied*. A court "accepts as true the facts alleged in the complaint." *Minks v. Pina*, 709 N.E.2d 379, 381 (Ind. Ct. App. 1999), *reh'g denied*, *trans. denied*. We review de novo the trial court's ruling on a motion to dismiss a civil complaint for failure to state a claim pursuant to Indiana Trial Rule 12(B)(6). *Id*.

[16] In his request for mandate, Manley alleged, in relevant part:

> [Defendants] have failed to comply with the requirements of *Ind. Code* § 34-13-9-8 (2020) when they were under a dut [sic] to act prior to imposing any restrictions upon [Manley's] religious rights, which includes the right to assert during an administrative proceeding a defense that the administrative action would place a substantial burden upon [Manley's] exercise of religion as guaranteed by *Ind. Constitution*, Art. 1 § 2 and *Ind. Code* § 34-13-9-9 (2020).

(App. Vol. II at 13.) While it is true Manley's request for mandate alleges Defendants violated his constitutional rights and artfully states tenets of law to support that argument, he does not allege HOW Defendants violated his constitutional right under Article 1, section 2 of the Indiana Constitution as to put the Defendants on notice of the actions against which they must defend. We agree that Manley does not have to state specific facts, but he must at make some sort of indication regarding the actions, or inactions, he alleged the Defendants did or did not take relevant to the alleged violations of his constitutional right under Article 1, section 2 of the Indiana Constitution. He did not do so in his complaint, and thus the trial court did not err when it granted Defendants' motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Indiana Trial Rule 12(B)(6).[2] *See Smith v. Progressive Southeastern Insurance Company*, 150 N.E.3d 192, 201 (Ind. Ct. App. 2020) (Smith's second complaint dismissed for failure to state a claim pursuant to Indiana Trial Rule 12(B)(6) because he "did not please specific facts to support his assertion and show how a smaller judgment would have resulted if [his attorney] had represented [another party] differently. Smith's contention,

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[2] Manley also argues

> Judge Crane specifically prevented Manley from amending his complaint to include the specific facts contained in his affidavit by directing the clerk's office to not make any entries in this case after May 6, 2021, the day that Judge Crane received the order remanding the case to him.

(Br. of Appellant at 11.) Manley cites to portions of the record; however, we are unable to locate any information about Manley's claim. As Manley has not provided an order or information in the record from which we can decide this issue, it is waived pursuant to Indiana Appellate Rule 46(A)(8)(a).

without more, is not sufficient at the pleading state to state a claim for any relief."), *trans. denied*.

Conclusion

[17] The trial court did not err when it dismissed the portions of Manley's request for mandate concerning statutory violations that allegedly occurred as part of the prison disciplinary process pursuant to Indiana Trial Rule 12(B)(1) because it did not have subject matter jurisdiction to review Manley's challenge to prison disciplinary decisions. Additionally, the trial court did not err when it dismissed Manley's constitutional claim under Article 1, section 2 of the Indiana Constitution pursuant to Indiana Trial Rule 12(B)(6) because Manley did not sufficiently allege what actions or inactions the Defendants allegedly took that resulted in an alleged violation of his constitutional right to free exercise of religion. Accordingly, we affirm.

[18] Affirmed.

Vaidik, J., and Mathias, J., concur.