

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 10, 2002

GREGORY HEDGES v. TENNESSEE DEPARTMENT OF CORRECTION

Appeal from the Circuit Court for Davidson County
No. 00C-3571 Barbara N. Haynes, Judge

No. M2002-00140-COA-R3-CV - Filed December 31, 2002

PATRICIA J. COTTRELL, J., concurring.

OPINION

I concur with the result and the reasoning of the majority opinion and write separately merely to add that even under a liberty interest analysis I would hold that Mr. Hedges has stated a claim for relief. A majority of this court has previously opined that a prisoner alleging that a disciplinary board did not follow procedural policies related to disciplinary proceedings failed to state a claim for relief under state law governing common law writ of certiorari. *Willis v. Tennessee Dep't. of Corr.*, No. M2000-01397-COA-R3-CV, 2002 Tenn. App. LEXIS 389, at *11-*12 (Tenn. Ct. App. June 5, 2002) *perm. to app. granted* (Tenn. Dec. 9, 2002); *Ahkeen v. Campbell*, No. M2000-02411-COA-R3-CV, 2001 Tenn. App. LEXIS 815, at *22 (Tenn. Ct. App. Nov. 2, 2001) (no Tenn. R. App. P. 11 application filed). However, the conclusion in both these cases was based upon a finding that deviation from procedures created by departmental policy did not rise to a "failure to proceed according to the essential requirements of the law," the test for illegality under the common law writ of certiorari. Punishment without a finding that a disciplinary violation has occurred does, however, constitute a failure to follow the essential requirements of the law. Therefore, even if *Sandin v. Conner* were held to apply to property interests as well as liberty interests, I would hold that Mr. Hedges has stated a claim for relief under state law.

PATRICIA J. COTTRELL, JUDGE