

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

No.3-10-0196

Order filed May 18, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

MARSHAN TERRELL ALLEN,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Petitioner-Appellant,)	Will County, Illinois,
)	
v.)	No. 06-MR-1053
)	
TERRY L. McCANN, CEO, Stateville)	Honorable
Correctional Center; and ROGER E. WALKER,)	Marzell L. Richardson, Jr.,
JR., Director, Illinois Department of Corrections,)	Judge Presiding.
)	
Respondents-Appellees.)	

JUSTICE WRIGHT delivered the judgment of the court.
Justices O'Brien and Schmidt concur in the judgment.

ORDER

Held: Petitioner's petition for mandamus prayed for relief against the warden at Stateville Correctional Center claiming petitioner's rights had been violated. Petitioner had been incarcerated at Western Illinois Correctional Center since shortly after the petition was filed, thereby precluding the court from granting effective relief to petitioner making the issue before this court moot.

The trial court dismissed petitioner's initial petition for mandamus in which petitioner, an inmate, claimed the respondent warden at Stateville Correctional Center (Stateville) violated his rights by failing to provide him with adequate winter clothing. After a dismissal, petitioner filed

an amended petition for mandamus on December 29, 2008, and respondent again filed a motion to dismiss. On November 2, 2009, the trial court granted respondent's motion to dismiss finding the amended petition failed to state a cause of action. Petitioner filed a timely appeal.

Appellee asserts that the issues on appeal are now moot because when petitioner filed his first amended petition for mandamus on December 29, 2008, he was no longer incarcerated at Stateville due to being transferred to Western Illinois Correctional Center (Western). We agree and dismiss this appeal.

BACKGROUND

On December 4, 2006, petitioner-appellant Marshan Terrell Allen (petitioner) was an inmate in the custody of the Illinois Department of Corrections (DOC) when he filed a petition for mandamus, against Robert Walker, Jr. (Walker), the director of DOC and respondent-appellee Terry L. McCann (respondent), the chief administrative officer and warden of Stateville Correctional Center (Stateville). The original petition asked the court to compel respondents to provide petitioner and the other inmates at Stateville with adequate winter clothing.

While petitioner was incarcerated at Stateville, petitioner conceded that he received a lined coat similar to that issued to all inmates during the colder seasons, but he claimed he did not receive "adequate" clothing for winter, as required by statute and administrative rules, because he did not receive additional items such as thermal underwear, winter hats or ear warmers, gloves, and insulated boots.

Respondent filed a motion to dismiss the petition on May 21, 2007, claiming the petition did not include sufficient allegations to clearly demonstrate petitioner was entitled to the requested relief. On November 24, 2008, the trial court issued an order allowing respondent's

motion to dismiss petitioner's original petition for mandamus.

Petitioner filed an amended petition on December 29, 2008, alleging similar facts and listing as respondents, "Roger E. Walker, Jr., *et al.*," which stated that petitioner was now incarcerated at Western Illinois Correctional Center (Western), Mt. Sterling, Illinois.¹ Petitioner added allegations to this amended petition that Western also failed to furnish adequate winter clothing to the inmates of that facility. In his prayer for relief, petitioner asked the trial court to enter an order compelling the respondents to comply with relevant rules and statutes by furnishing petitioner, as well as other prisoners, "with clothing adequate for the winter season," and "grant such other relief as the Court deems just and necessary, including nominal compensatory, and punitive damages."

Petitioner served the assistant attorney general representing respondent McCann with a copy of this amended petition. The record shows that petitioner did not obtain service on any other party.

Respondent filed a motion to dismiss the amended petition alleging the amended petition did not include sufficient facts clearly demonstrating petitioner was entitled to the requested relief. Additionally, respondent claimed that the petition was moot because petitioner was currently housed at Western in Mt. Sterling, Illinois. Further, respondent contended that McCann was no longer the warden at Stateville; the current warden and director of DOC had not been served with the amended (or original) petition; and petitioner had not obtained service on the prison officials at Western Illinois where he was incarcerated at the time of the amended petition.

¹ The record reflects that petitioner filed a "Change of Address" on January 25, 2007, with his new address in Mt. Sterling, Illinois.

Petitioner filed a response to the respondent's motion to dismiss the amended petition in June 2009.² On November 2, 2009, the court granted the motion to dismiss, and entered a written order finding:

“[Petitioner's] Petition of Mandamus states that his rights were violated due to inadequate clothing being issued to him for the winter season. Plaintiff admits receiving a lined winter coat or jacket but believes he is entitled to thermal underwear, *** winter hats or ear warmers, gloves and insulated boots or other footwear. However, [petitioner] fails to show he has a right to such items. Therefore [respondent's] Motion to Dismiss is granted.”

The court denied petitioner's motion to reconsider and petitioner filed a timely *pro se* appeal.³ We affirm.

ANALYSIS

On appeal, petitioner argues the trial court erred when it dismissed his amended petition for mandamus on grounds that his petition showed a clear right to adequate clothing and shoes during the winter season which Stateville did not provide. Initially, respondent argues that the issue raised in the amended petition is now moot because petitioner no longer resides at

² Petitioner also filed a second amended petition on June 18, 2009, naming “Director of the Illinois Department of Corrections and Warden of Stateville Correctional Center” as respondents, claiming inadequate winter clothing was provided by Western and Stateville. Petitioner did not ask leave to file the second amended petition, nor did the court address that petition. Petitioner also did not obtain service on any other party for this petition or the first amended petition.

³ We note that petitioner's address on appeal is Western Illinois Correctional Center.

Stateville;⁴ and the amended petition was solely served on Stateville's former warden, who is no longer the warden at Stateville, the current warden at Stateville no longer has control over petitioner's accommodations at Western. Alternatively, respondent contends that, even if this court addresses the merits of petitioner's amended petition, petitioner has failed to state a claim entitling him to the relief requested.

Illinois courts have held, "[w]hen 'intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party'[citation], then the appeal, and issues therein, are considered moot. The fact that a case is pending on appeal when the events which render an issue moot occur does not alter this conclusion." *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007). This court has held that "[a] mandamus petition will be dismissed as moot if no actual rights or interests of the parties remain or if events occur that make it impossible for the court to grant effectual relief to either party." *Jackson v. Peters*, 251 Ill. App. 3d 865, 867 (1993).

Illinois courts have determined that, when an inmate is transferred to another prison, a claim for injunctive relief against an official at the first prison is moot unless the inmate demonstrates that he is likely to be transferred back to the former facility. *Murillo v. Page*, 294 Ill. App. 3d 860, 867 (1998); *Higgason v. Farley*, 83 F.3d 807, 811 (1996). Injunctive relief is similar to the relief requested in the mandamus petition at bar. Nothing in this record indicates that petitioner is likely to be transferred back to Stateville. The record shows that petitioner has been incarcerated at Western for nearly four years. Accordingly, we hold that petitioner's transfer to Western has made his mandamus petition moot against the former warden at Stateville.

⁴ Petitioner resided at Western at the time he filed his first amended petition.

CONCLUSION

Petitioner's appeal is dismissed.

Appeal dismissed.