

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. 4-10-0128

Order filed 2/18/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MASON WILLIAMS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
THE ILLINOIS DEPARTMENT OF)	No. 09MR37
CORRECTIONS; GLADYSE TAYLOR,)	
Acting Director; and THE ILLINOIS)	Honorable
PRISONER REVIEW BOARD, ADAM MONREAL,)	Jennifer H. Bauknecht,
Chairman,)	Judge Presiding.
Defendants-Appellees.		

JUSTICE MYERSCOUGH delivered the judgment of the court. Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

Held: Trial court did not err by dismissing prisoner's petition seeking *habeas corpus*, *mandamus*, and declaratory relief for failure to state a claim and *laches*.

Plaintiff, Mason Williams, appeals the trial court's order dismissing his petition seeking *habeas corpus*, *mandamus*, and declaratory relief against defendants, Illinois Department of Corrections (DOC), Director Roger E. Walker, Jr., and the Illinois Prison Review Board (Board). Gladyse Taylor is the current Acting Director of IDOC, and she may be substituted as a party for Roger E. Walker Jr., pursuant to section 2-1008(d) of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1008(d) (West 2008)). For the following reasons, we affirm the trial

court.

I. BACKGROUND

On March 18, 2009, plaintiff filed a petition seeking *habeas corpus*, *mandamus*, and declaratory relief. Plaintiff alleged that in 1991, he was sentenced to 18 years' imprisonment for aggravated criminal sexual assault. While in prison, plaintiff was charged with and convicted of aggravated battery of two correctional officers. For that offense, plaintiff was sentenced to a consecutive 10-year sentence.

Plaintiff alleged that while in prison, he was the recipient of various disciplinary-conduct reports that resulted in him losing all of his good-conduct credit. Plaintiff also alleged he received a large amount of solitary confinement, which violated his eighth-amendment rights, was "arbitrary," and an abuse of authority.

In his petition, plaintiff sought (1) an order declaring that defendants could not revoke good-conduct credits that were not yet earned "due to a consecutive sentence that has not begun"; (2) restoration of "any and all" good-conduct credit that was revoked, pursuant to either *mandamus* or *habeas corpus*; and (3) immediate release from custody and/or solitary confinement. In support thereof, plaintiff alleged he was entitled to such relief because (1) the disciplinary proceedings

did not comply with due process because witnesses were not called, committee members were not impartial, the committee failed to consider exculpatory evidence, and the Board did not provide a summary of the evidence relied upon or why good-conduct credits were revoked; (2) defendants could not revoke good-conduct credit from a 10-year consecutive sentence that plaintiff had not yet begun serving; (3) treating consecutive sentences as a single term was unconstitutional, violated due process, and violated the equal-protection clause; and (4) the deprivation of good-conduct credit under the authority of Public Act 88-699 (Pub. Act 89-688, eff. June 1, 1997 (1996 Ill. Laws 3738, 3739)) was void because Public Act 89-688 has been declared unconstitutional.

Finally, plaintiff asserted he was entitled to immediate release if DOC treated the consecutive sentence as one sentence. Plaintiff asserted he was sentenced to a total of 28 years' imprisonment. Day-for-day good-conduct credit would amount to 14 years of good-conduct restoration. According to plaintiff, that entitled him to immediate release.

Plaintiff attached to his petition three pages of a seven-page exhibit from another lawsuit, entitled "*Williams v. Snyder*, Case No. 01-367-GPM." The document listed several disciplinary proceedings dating from 1998 through 2001 and the resulting punishments. Plaintiff also attached to his petition

two pages of an Inmate Assignment and Housing log dated "received" on October 2, 1998, and listing housing assignments and disciplinary actions. The disciplinary actions listed dated from 1998 through 2003.

In September 2009, defendant Walker filed a motion to dismiss pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2008)). In December 2009, Jorge D. Montes, chairman of the Board, filed a similar motion to dismiss.

On January 8, 2010, the trial court granted the motion. The court found (1) plaintiff's claims were barred by *laches*; (2) the statute plaintiff argued was unconstitutional did not apply to plaintiff's claim; (3) plaintiff failed to set forth any specific facts in support of his claims; (4) without more information, it appeared that solitary confinement, reinstatement of good-conduct credit, and expungement of disciplinary records were discretionary with DOC and not subject to *mandamus* relief; and (5) plaintiff did not exhaust his administrative remedies.

This appeal followed.

II. ANALYSIS

On appeal, plaintiff argues the trial court erred by dismissing his complaint because he stated a claim for *mandamus*, *habeas corpus*, and declaratory relief. We disagree.

A. Standard of Review Is *De Novo*

A section 2-615 motion attacks the legal sufficiency of

the complaint. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499, 911 N.E.2d 369, 373 (2009). "To survive a motion to dismiss for the failure to state a cause of action, a complaint must be both legally and factually sufficient." *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 434, 876 N.E.2d 659, 664 (2007).

"The question presented by a section 2-615 motion to dismiss is whether the allegations of the complaint, when taken as true and viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Turner*, 233 Ill. 2d at 499, 911 N.E.2d at 373. Illinois is a fact-pleading jurisdiction in which the plaintiff must allege specific facts to bring the complaint's allegations within a recognized cause of action. *Turner*, 233 Ill. 2d at 499, 911 N.E.2d at 373. The trial court should only grant a section 2-615 motion where it appears that the plaintiff can plead no set of facts that would entitle him to relief. *Ozuk v. River Grove Board of Education*, 281 Ill. App. 3d 239, 244, 666 N.E.2d 687, 691 (1996). This court reviews *de novo* the trial court's grant of a section 2-615 motion to dismiss. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473, 905 N.E.2d 781, 789 (2009). In addition, a trial court's order dismissing the case may be affirmed on any basis found in the record. *Rodriguez*, 376 Ill. App. 3d at 433, 876 N.E.2d at 663.

B. Plaintiff Did Not State a Claim for *Habeas Corpus* Relief

Plaintiff argues on appeal that he stated a claim for *habeas corpus* relief. We disagree.

Section 10-124 of the Civil Code (735 ILCS 5/10-124 (West 2008)) sets forth the grounds for relief available through a *habeas corpus* proceeding. Those grounds can be summarized as allowing *habeas corpus* relief where (1) the trial court lacked jurisdiction or (2) an occurrence has taken place after the prisoner's conviction that entitles him to immediate release from custody. *Beacham v. Walker*, 231 Ill. 2d 51, 58, 896 N.E.2d 327, 332 (2008). A petition that fails to allege one of these defects may not be reviewed through a *habeas corpus* proceeding. *Robinson v. Schomig*, 326 Ill. App. 3d 447, 448-49, 760 N.E.2d 572, 573 (2001), citing *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430, 704 N.E.2d 350, 351 (1998). Under *habeas corpus*, the sole relief is a prisoner's immediate discharge from custody. *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125, 853 N.E.2d 878, 881 (2006).

On appeal, plaintiff asserts that had his good-conduct credit not been revoked, he would have been released by now. However, in his petition, plaintiff only alleged, in a conclusory fashion, that revocation of "all" of his good-conduct credit was improper because witnesses were not called, committee members were not impartial, and the committee failed to consider

exculpatory evidence. See, e.g., *People ex rel. Roseman v. Trachtman*, 139 Ill. App. 3d 5, 9, 487 N.E.2d 77, 80 (1985) (finding the plaintiffs failed to state a claim for *habeas* relief where the allegations were conclusory). Plaintiff alleged no specifics facts, did not identify which witnesses should have been called, did not allege why committee members were not impartial, and did not allege that exculpatory evidence even existed.

Plaintiff also argues on appeal that section 3-5-1(b) of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/3-5-1(b) (West 2008)) requires that the Board give plaintiff a "summary" explaining why good-conduct credit was revoked and indicating the evidence relied upon. Section 3-5-1(b) requires that an inmate be given the factual basis for any decision affecting the length of commitment:

"If [DOC] or the Prisoner Review Board makes a determination *** which affects the length of the period of confinement or commitment, the committed person and his counsel shall be advised of factual information relied upon *** to make the determination." 730 ILCS 5/3-5-1(b) (West 2008).

However, plaintiff only alleges he did not receive the factual basis from the Board. Plaintiff does not allege he never

received a factual basis--such as from the adjustment committee. See, e.g., *Ford v. Walker*, 377 Ill. App. 3d 1120, 1126, 888 N.E.2d 123, 128 (2007) (requirements of section 3-5-1(b) of the Corrections Code are met where the prisoner was advised of the factual basis for the revocation of good-conduct credit at the adjudicatory-hearing level of the proceedings).

Moreover, this court questions whether challenging disciplinary proceedings on the ground that DOC failed to follow its own rules states a claim for *habeas* relief. See, e.g., *Robinson*, 326 Ill. App. 3d at 449, 760 N.E.2d at 574 (finding allegations that the prisoner's due-process rights were violated in numerous disciplinary proceedings did not state a claim for *habeas* relief; also noting the prisoner did not allege he was currently being held beyond the time he may legally be detained); but see *Adcock v. Snyder*, 345 Ill. App. 3d 1095, 1099, 804 N.E.2d 141, 144 (2004) (finding that the plaintiff stated a claim for *habeas corpus* relief where, if his claims that 3 1/2 years of good-conduct credit were unlawfully revoked was meritorious, he would be entitled to immediate release from prison; the plaintiff filed his complaint two months after his projected release date). For all these reasons, the trial court did not err by dismissing plaintiff's petition for *habeas* relief.

C. Plaintiff Did Not State a Claim for *Mandamus* Relief

Mandamus is an extraordinary remedy to compel a public

officer to perform nondiscretionary, official duties. *Park Superintendents' Professional Ass'n v. Ryan*, 319 Ill. App. 3d 751, 757, 745 N.E.2d 618, 624 (2001). In a complaint for *mandamus*, the plaintiff must set forth every material fact needed to demonstrate (1) the plaintiff's clear, affirmative right to relief, (2) a clear duty of the public official to act, and (3) clear authority in the public official to comply with the writ. *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555, 778 N.E.2d 701, 703 (2002); *Turner-El v. West*, 349 Ill. App. 3d 475, 480, 811 N.E.2d 728, 733 (2004). A plaintiff is required to set forth each and every material fact necessary to show he is entitled to a writ of *mandamus*. *Chicago Ass'n of Commerce & Industry v. Regional Transportation Authority*, 86 Ill. 2d 179, 185, 427 N.E.2d 153, 156 (1981).

On appeal, plaintiff asserts he stated a claim for *mandamus* relief, essentially on the same grounds asserted in support of his *habeas* claims: (1) DOC did not follow its own rules, including the requirement that the Board provided a summary why good-conduct credits were revoked pursuant to section 3-5-1(b) of the Corrections Code; and (2) plaintiff was denied due process in all of his disciplinary hearings, namely that witnesses were not called, the committee members were not impartial, and the committee failed to consider exculpatory evidence. Plaintiff also asserts his *mandamus* claim was not

barred by *laches*.

We disagree for the same reasons this court found plaintiff failed to allege sufficient facts in support of his *habeas* petition. Plaintiff's allegations are conclusory and fail to demonstrate a clear right to relief. In addition, plaintiff's *mandamus* claims are barred by *laches*.

"[T]he doctrine of *laches* applies to petitions for writ of *mandamus*." *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739, 791 N.E.2d 666, 671 (2003). A party asserting *laches* must prove "(1) lack of due diligence by the party asserting a claim; and (2) prejudice to the party asserting *laches*." *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671. Lack of due diligence may be established by "showing that more than six months elapsed between the accrual of the cause of action and the filing of the petition, unless the plaintiff provides a reasonable excuse for the delay." *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671. Prejudice is inherent where "'detriment or inconvenience to the public will result.'" *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671. Detriment or inconvenience to the public exists where inmates file the petition more than six months after completion of the original DOC disciplinary proceeding and no reasonable excuse for delay exists. *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671 (quoting *City of Chicago v. Condell*, 224 Ill. 595, 598-99, 79 N.E. 954, 956 (1906)); see also *People ex rel. Casey*

v. Health & Hospitals Governing Comm'n, 37 Ill. App. 3d 1056, 1058, 347 N.E.2d 261, 263 (1976) (noting that no absolute rule by which *laches* can be determined exists and a determination of *laches* depends upon the circumstances of each case).

Here, plaintiff challenges disciplinary proceedings dating from 1998 to 2003. Plaintiff did not file this lawsuit until 2009. Plaintiff did not allege a reasonable excuse for the delay in seeking relief. Moreover, because more than six months has passed and plaintiff did not allege a reasonable excuse for the delay, prejudice to defendant is presumed. *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671. Therefore, plaintiff's claims relating to the disciplinary proceedings occurring between 1998 and 2003 are barred by *laches*.

Plaintiff argues, however, that the disciplinary proceedings are void and can be attacked at any time. Plaintiff makes two claims in support of his argument that the disciplinary proceedings are void. Plaintiff argues (1) Public Act 89-688 (Pub. Act 89-688, eff. June 1, 1997 (1996 Ill. Laws 3738, 3739)), which amended, among other statutory provisions, section 3-8-7 of the Corrections Code (730 ILCS 5/3-8-7 (West 2008) (providing DOC the authority to establish disciplinary procedures)), was found unconstitutional in *People v. Foster*, 316 Ill. App. 3d 855, 860, 737 N.E.2d 1125, 1130 (2000); and (2) section 5-8-4(b) of the Corrections Code (730 ILCS 5/5-8-4(b) (West 2008)), relating to

consecutive sentences, is unconstitutional for violating the equal-protection and *ex post facto* clauses of the United States Constitution (U.S. Const., amend. XIV; U.S. Const., art. I, §10).

However, "the equitable defense of *laches* may be interposed to an attack on a void judgment." *In re Adoption of Miller*, 106 Ill. App. 3d 1025, 1030, 436 N.E.2d 611, 615 (1982); see also *Eckberg v. Benso*, 182 Ill. App. 3d 126, 131, 537 N.E.2d 967, 971 (1989) (*laches* has been applied to decrees deemed void). In any event, this court disagrees that the disciplinary proceedings were void.

First, the disciplinary proceedings are not void simply because the version of section 3-8-7 of the Corrections Code in effect at the time was rendered *void ab initio* because the version of section 3-8-7 of the Corrections Code in effect prior to the passage of Public Act 89-688 remained in effect. *People v. Carrera*, 203 Ill. 2d 1, 14-15, 783 N.E.2d 15, 23 (2002). Second, although plaintiff's argument regarding section 5-8-4(b) of the Corrections Code is not entirely clear, plaintiff did not state a claim of an equal-protection or *ex post facto* violation. Plaintiff neither identifies the class of persons allegedly treated differently nor does he allege he was treated unequally. See, e.g., *People ex rel. Braver v. Washington*, 311 Ill. App. 3d 179, 189, 724 N.E.2d 68, 75-76 (1999) (noting that the equal-protection clauses "mandate that state regulations and

legislation accord similar treatment to similarly situated persons"); *Murillo v. Page*, 294 Ill. App. 3d 860, 867, 690 N.E.2d 1033, 1039 (1998) (finding the plaintiff did not allege an equal-protection claim where the policy applied to all inmates and all C-grade inmates were treated equally). Neither has plaintiff stated an *ex post facto* claim. "A law is *ex post facto* if it is both retroactively applied and disadvantageous to a defendant." *McGee v. Snyder*, 326 Ill. App. 3d 343, 348, 760 N.E.2d 982, 987 (2001). Plaintiff has not identified any sort of change that affected his legal rights. For all these reasons, the trial court did not err by dismissing plaintiff's petition for writ of *mandamus*.

D. Plaintiff Did Not State a Claim for Declaratory Relief

The declaratory-judgment statute (735 ILCS 5/2-701 (West 2008)) does not create substantive rights but "merely affords an additional procedural method for their judicial determination." *Mack v. Plaza DeWitt Ltd. Partnership*, 137 Ill. App. 3d 343, 349, 484 N.E.2d 900, 905 (1985) (holding that "[b]ecause the remedy is strictly procedural, an action for such relief must state a claim based upon particular substantive legal theories"). Therefore, because plaintiff did not allege a cognizable claim, he is not entitled to declaratory relief. *Beahringer v. Page*, 204 Ill. 2d 363, 373, 789 N.E.2d 1216, 1224 (2003).

E. Plaintiff Forfeited Claim Regarding
In Forma Pauperis Petition

On appeal, plaintiff argues the trial court erred in "assessing payment in this action." Plaintiff asserts that upon filing the complaint, he requested to proceed *in forma pauperis*. According to plaintiff, at the end of the case, the trial court imposed as a sanction that plaintiff pay "costs."

Nothing in the record supports any of plaintiff's allegations. The record does not reflect the filing of an *in forma pauperis* petition, a grant of that petition, or the trial court imposing any sanctions on plaintiff. The appellant bears the burden of presenting a record that is adequate for a determination of the issues raised. *People v. House*, 202 Ill. App. 3d 893, 908, 560 N.E.2d 1224, 1234 (1990); *Palmisano v. Connell*, 179 Ill. App. 3d 1089, 1099, 534 N.E.2d 1243, 1250 (1989). Because plaintiff failed to provide a sufficient record, this court cannot review this claim.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.