

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. 4-10-0518

Order filed 2/16/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JAMES ARMSTRONG,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
DAVE REDNOUR, Warden, Menard Correc-)	No. 10MR24
tional Center,)	
Defendant-Appellee.)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE MYERSCOUGH delivered the judgment of the court. Justices Turner and Steigmann concurred in the judgment.

ORDER

Held: Because plaintiff was not entitled to immediate release from custody even if his allegations were true, plaintiff failed to state a claim for *habeas corpus* relief.

In March 2010, plaintiff, James Armstrong, filed a *pro se habeas corpus* petition against defendant Guy D. Pierce, acting warden of the Pontiac Correctional Center (Pontiac). During the pendency of this appeal, plaintiff was transferred to Menard Correctional Center (Menard). Therefore, the proper defendant is Dave Rednour, the warden of Menard, and he may be substituted as a party for Guy D. Pierce pursuant to section 2-1008(d) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1008(d) (West 2008)). See *Hennings v. Chandler*, 229 Ill. 2d 18, 24 n.2, 890 N.E.2d 920, 923 n.2 (2008) (the proper defendant in a prisoner's

habeas corpus action is his current custodian). In June 2010, the trial court dismissed the petition. Plaintiff appeals, arguing the court erred by dismissing his *habeas corpus* petition. We affirm.

I. BACKGROUND

On March 8, 2010, plaintiff filed a *pro se habeas corpus* petition. Plaintiff alleged he was currently incarcerated at Pontiac serving a total of 29 years on various convictions between 1984 and 1991, including (1) a 1984 conviction for armed robbery, (2) a 1989 conviction for bringing contraband in a penal institution, (3) a 1990 conviction for aggravated battery, (4) a 1990 conviction for knowing damages to property, and (5) a 1991 conviction for aggravated battery. According to plaintiff, he was entitled to immediate release from prison because 2 years of good-conduct credit was wrongfully revoked and he was never credited with 186 days of sentence credit. According to plaintiff, because his current release date was October 6, 2011, he was entitled to immediate release from the Department of Corrections (DOC).

In March 2010, defendant filed a motion to dismiss pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2008)). Defendant argued, among other grounds, that plaintiff was not entitled to immediate release because he was subject to a two-year term of mandatory

supervised release which moved his projected discharge date to October 6, 2013. On June 18, 2010, the trial court entered a docket entry granting defendant's motion to dismiss.

This appeal followed.

II. ANALYSIS

A. Standard of Review Is *De Novo*

A motion to dismiss brought pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2008)) attacks the legal sufficiency of the complaint. *Beacham v. Walker*, 231 Ill. 2d 51, 57, 896 N.E.2d 327, 331 (2008). The court accepts as true all well-pleaded facts, and the allegations are viewed in the light most favorable to the plaintiff. *Adcock v. Snyder*, 345 Ill. App. 3d 1095, 1098, 804 N.E.2d 141, 143 (2004).

A motion brought pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2008)) admits the legal sufficiency of the complaint but raises an affirmative matter to avoid the claim. *Peetoom v. Swanson*, 334 Ill. App. 3d 523, 526, 778 N.E.2d 291, 294 (2002). We review a trial court's dismissal under both sections *de novo*. *Stephen L. Winternitz, Inc. v. National Bank of Monmouth*, 289 Ill. App. 3d 753, 755, 683 N.E.2d 492, 494 (1997). This court may affirm the court's ruling on any basis warranted by the record. *Ashley v. Pierson*, 339 Ill. App. 3d 733, 737, 791 N.E.2d 666, 669-70 (2003).

B. Trial Court's Dismissal Was Proper

Section 10-124 of the 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*, 231 Ill. 2d at 58, 896 N.E.2d at 332. 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).

In this case, plaintiff alleged an occurrence took place after his conviction that entitles him to immediate release from custody. We disagree.

Even assuming plaintiff has sufficiently alleged he is entitled to 2 years of good-conduct credit and 186 days of sentence credit--a determination this court does not make--that would not entitle him to immediate release from custody because plaintiff failed to take into account his term of mandatory

supervised release. *Habeas corpus* relief is not available until plaintiff has served his maximum sentence, including his mandatory-supervised-release term. See *Barney*, 184 Ill. 2d at 431, 704 N.E.2d at 351 (a prisoner remains in DOC's custody until his mandatory-supervised-release term expires); *Newsome v. Hughes*, 131 Ill. App. 3d 872, 875, 476 N.E.2d 478, 481 (1985) ("Since a prisoner on mandatory supervised release remains in the custody of the Department of Corrections, the time during which he can be legally detained does not expire until the term of mandatory supervised release expires").

The documents attached to plaintiff's petition show that he expected to be released from prison on October 6, 2011. Plaintiff alleged that if he received the good-conduct credit and sentencing credit he alleges were wrongfully withheld, he would be entitled to immediate release from custody. That is, plaintiff essentially asserts that 2 years and 186 days taken from October 6, 2011, puts his release-from-custody date at approximately March 29, 2009.

However, the October 6, 2011, date did not take into account plaintiff's two-year term of mandatory supervised release, as reflected by the official website of DOC, which shows plaintiff's projected discharge date as October 6, 2013. See *People v. Mitchell*, 403 Ill. App. 3d 707, 709, 936 N.E.2d 659, 661 (2010) (taking judicial notice of the official website of

DOC). As a result, even if plaintiff were entitled to reinstatement of 2 years of good-conduct credit and 186 days of sentence credit, that would not result in plaintiff's immediate release because 2 years and 186 days of credit from October 6, 2013, puts plaintiff's release-from-custody date at approximately March 29, 2011. See *Faircloth*, 367 Ill. App. 3d at 125, 853 N.E.2d at 881 (if a prisoner's maximum prison term has not yet expired, and nothing has occurred subsequent to his conviction to warrant his immediate discharge, the trial court is without jurisdiction to grant *habeas corpus* relief). Consequently, because plaintiff was not entitled to immediate release from custody even if his allegations were true, plaintiff failed to state a claim for *habeas corpus* relief.

III. CONCLUSION

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

Affirmed.