

NOTICE
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NO. 4-10-0274

Filed 1/19/11

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

LUIS SAUCEDO,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
GLADYSS TAYLOR, Acting Director,)	No. 08MR377
Illinois Department of Corrections,)	
Defendant-Appellee.)	Honorable
)	Leo J. Zappa, Jr.,
)	Judge Presiding.

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

ORDER

Held: (1) Plaintiff did not state a claim for *mandamus* relief relating to disciplinary reports issued between 1997 and 2003. Prison disciplinary reports are not automatically void when the version of the statute in effect during that time is found void *ab initio*, and plaintiff did not allege facts indicating he was entitled to *mandamus* relief under the former version of the statute and regulations promulgated thereunder. The claim is also barred by *laches*.

(2) Plaintiff did not state a claim for *mandamus* relief relating to a disciplinary report issued in 2007. The prison rule outlining the offense of "Security Threat Group or Unauthorized Organizational Activity" was not vague and gave plaintiff fair warning and notice of the prohibited conduct.

Plaintiff, Luis Saucedo, an inmate at Lawrence Correctional Center, filed a complaint for *mandamus*. Plaintiff sought an order directing defendant, Roger E. Walker Jr., the Director of the Illinois Department of Corrections (IDOC), to

expunge all disciplinary reports plaintiff received between June 1, 1997, and July 22, 2003, as well as the disciplinary report received in June 2007. Gladys 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)).

Defendant filed a motion to dismiss pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2008)). In March 2010, the trial court granted the motion to dismiss.

Plaintiff appeals, asserting (1) the trial court erred by dismissing count I (relating to discipline received between June 1997 and July 2003) on the ground of *laches* because the State did not show prejudice and because the discipline imposed was void and could be attacked at any time, and (2) the court erred by dismissing count II (relating to the June 2007 discipline) because plaintiff's due-process rights were violated because Rule 205 was too vague and he did not receive clarification. We affirm.

I. BACKGROUND

In June 2007, plaintiff was issued a disciplinary report alleging plaintiff violated two disciplinary rules: Rule 205--Security Threat Group or Unauthorized Organization Activity and Rule 310--Abuse of Privileges. See 20 Ill. Adm. Code §504 app. A, as added at 27 Ill. Reg. 6214, 6294, 6297 (eff. May 1,

2003). According to the report, plaintiff wrote two letters that "appeared to be Security Threat Group related in nature due to the number of nicknames used throughout." (The letters are not contained in the record on appeal.)

The first letter was written to an inmate at another facility who prison officials "identified as being affiliated with the Latin Kings STG [(security threat group)]." In that letter, plaintiff relayed what was going on at the facility, including that another inmate had been booked for fighting and placed in segregation.

The second letter was addressed to an individual in Berwyn, Illinois. In that letter, plaintiff named 10 individuals by nicknames. Those 10 individuals were identified by prison officials as past or current IDOC inmates, and all were affiliated with the Latin Kings security threat group. The second letter provided various information, including the following: (1) "'Lil Lefty' went on vacation for a month, which was interpreted as indicating that he was placed in segregation; (2) "'CJ and Columbia' sent their regards"; (3) "'Pro' had touched down," which was interpreted as indicating he was paroled; (4) plaintiff's family was from Pro's neighborhood and that "'you may run into 'Krazyman or Poncho'"; (5) plaintiff was surprised he had not heard from "'Bird,'" who was on parole; (6) "'Indio' was here but he left to [sic] Western or IL River"; and

(7) "'Lil Locco'" hung himself at Pontiac. The letter also mentioned "'Kato'" and "'Krazy.'"

The disciplinary report further noted the following:

"Although it is apparent that [plaintiff] is answering in part questions from a previous letter allowed in, *** it shows he is an active Latin King affiliate communicating information concerning Security Threat Group members and activities. [Plaintiff] has violated rules outlined in DR 504 concerning inmates not being allowed to participate in Security Threat Group activity and has violated IDOC rules concerning mail by attempting to write another inmate without proper approval."

Plaintiff submitted a statement in defense, denying he had engaged in any gang activity. In the statement, plaintiff requested clarification of and the actual definition of security threat group activity in Rule 205. Plaintiff also asserted nicknames did not constitute security threat group activity. Plaintiff denied he was guilty of violating Rule 205 relating to security threat group activity and asserted he should only be charged with violating Rule 310 relating to the abuse of privileges (apparently referring to his attempt to send a letter

to another inmate).

In June 2007, the adjustment committee found plaintiff guilty of both offenses, noting plaintiff violated rules concerning "inmates not being allowed to participate in Security Threat Group activity." The following discipline was imposed: three months at C-Grade status, three months of segregation, and six months of contact visit restriction.

Plaintiff exhausted his administrative remedies through IDOC's grievance process. In September 2008, plaintiff filed a complaint for *mandamus*. In his first claim, plaintiff alleged that between June 1, 1997, and July 22, 2003, he received various disciplinary reports while confined in the Menard and Pickneyville Correctional Centers. Plaintiff asked that those disciplinary reports be expunged because, in *People v. Foster*, 316 Ill. App. 3d 855, 737 N.E.2d 1125 (2000), the court ruled that the disciplinary procedures used during "said time period" were unconstitutional and violated the single-subject rule.

In count II, plaintiff sought to expunge the disciplinary report alleging he violated Rule 205 and Rule 310. Plaintiff asserted he was denied freedom of speech and due process in the disciplinary process. Plaintiff alleged that correspondence to a member of society (the second letter) did not encompass security threat group activity. Plaintiff further alleged the definition of Rule 205 was so broad that the rule did

not put inmates on specific notice of what behavior would violate the rule. Plaintiff also alleged his constitutional right to due process was violated because he was not given enough information to mount a defense. Finally, he alleged that the offense defined in Rule 310 could not stand because mail was a right.

In March 2009, defendant filed a motion to dismiss pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2008)). Defendant asserted (1) plaintiff was not entitled to expungement of the June 14, 2007, disciplinary report because the *Foster* case on which he based his claim concerned only a monetary fine under the Violent Crime Victims Assistance Act (725 ILCS 240/10(c) (1) (West 1998)) and did not address the issue of disciplinary procedures used in the prison setting or how those disciplinary procedures are or were in violation of the single-subject rule; (2) plaintiff was not denied free speech; (3) plaintiff's due-process rights were not violated; and (4) plaintiff had access to and was aware of departmental rules regarding gang activity.

In March 2010, following a telephone hearing, the trial court entered an order granting the motion to dismiss. No transcript of the telephone hearing is contained in the record on appeal.

In the order, the trial court concluded that (1) the *Foster* case did not address the disciplinary procedures used in

the prison setting or how those procedures violated the single-subject rule; (2) plaintiff's due-process rights were not violated because the hearing held complied with the procedural requirements set forth in *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974); (3) plaintiff had access to and was aware of the departmental rules regarding gang activity; (4) defendant did not deny plaintiff his freedom of speech; and (5) plaintiff's challenge to discipline dating back to 1997 was barred by *laches*.

This appeal followed. We affirm.

II. ANALYSIS

On appeal, plaintiff argues (1) the trial court erred by dismissing count I (relating to discipline received between June 1997 and July 2003) on the ground of *laches* because the State did not show prejudice and because the discipline imposed was void and could be attacked at any time, and (2) the court erred by dismissing count II (relating to the June 2007 discipline) because plaintiff's due-process rights were violated because Rule 205 was too vague and he did not receive clarification.

A. Standard of Review Is *De Novo*

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).

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 Failed To State Claim
Upon Which Relief Could Be Granted

1. *Trial Court Did Not Err by Dismissing Count I*

In count I, plaintiff alleged that he was entitled to expungement of disciplinary reports issued between June 1997 and June 2003 because Public Act 89-688 (Pub. Act 89-688 §2, eff. June 1, 1997 (1996 Ill. Laws 3738, 3739)) was found unconstitutional for violating the single-subject rule. In support thereof, plaintiff relied on *Foster*, 316 Ill. App. 3d at 860, 737 N.E.2d at 1130 (holding that Public Act 89-688, which, in part, amended the Violent Crime Victims Assistance Act, was unconstitutional for violating the single-subject rule; therefore, the law in effect at the time of the defendant's

conviction applied).

The Unified Code of Corrections (Corrections Code) (730 ILCS 5/1-1-1 *et seq.* (West 2008)) governs, among other things, disciplinary procedures imposed upon inmates in adult institutions. See 730 ILCS 5/3-8-7 (West 1996). IDOC promulgated rules governing the administration of such discipline. See 20 Ill. Adm. Code §§504.10 through 504.150 as amended by 22 Ill. Reg. 1206, 1211 (eff. January 1, 1998) and 27 Ill. Reg. 6214, 6221-43 (eff. May 1, 2003).

Public Act 89-688 amended section 3-8-7 of the Corrections Code (and other statutory provisions) effective June 1, 1997. Pub. Act 89-688 §2, eff. June 1, 1997 (1996 Ill. Laws 3738, 3739). IDOC subsequently amended its administrative regulations. In *Foster*, 316 Ill. App. 3d at 860, 737 N.E.2d at 1130, Public Act 89-688 was held unconstitutional for violation of the single-subject rule of the Illinois Constitution (Ill. Const. 1970, art. IV, §8(d)). See also *People v. Burdunice*, 339 Ill. App. 3d 986, 988-89, 791 N.E.2d 1148, 1151 (2003), *aff'd*, 211 Ill. 2d 264, 811 N.E.2d 678 (2004). This rendered the amendments to section 3-8-7 void *ab initio*. See *People v. Carrera*, 203 Ill. 2d 1, 14-15, 783 N.E.2d 15, 23 (2002). As such, the version of section 3-8-7 in effect prior to the passage of Public Act 89-688 remained in effect. See, e.g., *People v. Gersch*, 135 Ill. 2d 384, 391-92, 553 N.E.2d 281, 284

(1990).

Plaintiff essentially alleged in his complaint that the disciplinary reports received between June 1, 1997, and July 22, 2003, must be expunged because the disciplinary procedure used was under the authority of a statute found unconstitutional. He asserts on appeal that his challenge to those disciplinary reports is not barred by *laches* because the disciplinary reports obtained in an unconstitutional manner are void.

However, the disciplinary reports are not void simply because the version of section 3-8-7 of the Corrections Code in effect at that time was rendered void *ab initio*. As noted above, 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. See *Carrera*, 203 Ill. 2d at 14-15, 783 N.E.2d at 23. Plaintiff's complaint failed to contain any factual allegations that would suggest that he is entitled to *mandamus* relief under the former version of section 3-8-7 of the Corrections Code and regulations promulgated thereunder. Moreover, the disciplinary reports were not rendered void and subject to attack at any time, and, therefore, plaintiff's claim is subject to *laches*.

The 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 the 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, quoting *City of Chicago v. Condell*, 224 Ill. 595, 598-99, 79 N.E.2d 954, 956 (1906). Detriment or inconvenience to the public exists where inmates file the petition more than six months after completion of the original IDOC disciplinary proceeding and no reasonable excuse for delay exists. *Ashley*, 339 Ill. App. 3d at 739, 791 N.E.2d at 671; see also *People ex rel. Casey v. Health & Hospitals Governing Comm.*, 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 brought his claim more than five years after the last of the disciplinary reports were imposed and more than eight years after *Foster* was decided. 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 reports imposed between June 1, 1997, and July 22, 2003, are barred by *laches*.

2. *Trial Court Did Not Err by Dismissing Count II*

Plaintiff was found guilty of violating Rule 205, which outlines the offense of "Security Threat Group or Unauthorized Organizational Activity":

"Engaging, pressuring, or authorizing others to engage in security threat group or unauthorized organizational activities, meetings, or criminal acts; displaying, wearing, possessing, or using security threat group or unauthorized organizational insignia or materials; or giving security threat group or unauthorized organizational signs.

Unauthorized organizational activity shall include engaging in the above activities by or on behalf of an organization that has not been approved pursuant to 20 Ill. Adm. Code 445 or 450." 20 Ill. Adm. Code §504 app. A as added at 27Ill. Reg. 6214, 6294 (eff. May 1, 2003).

On appeal, plaintiff argues he was denied due process

because Rule 205 was vague, and he did not receive clarification of the rule even though he requested clarification. Plaintiff asserts that because his due-process rights were violated, he is entitled to expungement of the records.

Administrative rules and regulations have the force and effect of law and are presumed valid. *People v. Selby*, 298 Ill. App. 3d 605, 611, 698 N.E.2d 1102, 1107 (1998) (involving administrative rule regulating the conduct of IDOC employees). Any doubts are resolved in favor of the validity of the rule or regulation challenged. *Granite City Division of National Steel Co. v. Illinois Pollution Control Board*, 155 Ill. 2d 149, 165, 613 N.E.2d 719, 726 (1993). The same rules of construction that apply to statutes apply to rules and regulations. *Selby*, 298 Ill. App. 3d at 612, 698 N.E.2d at 1107.

When faced with a vagueness challenge to a statute, a court considers not only the language used, but also the legislative objective or evil the statute is designed to remedy. *Campuzano v. Peritz*, 376 Ill. App. 3d 485, 490, 875 N.E.2d 1234, 1238 (2007). "The language of the regulation must convey with sufficient certainty fair warning and notice of what constitutes prohibited conduct, and what is fair and adequate is measured by common understanding." *Granite City*, 155 Ill. 2d at 164, 613 N.E.2d at 725.

Even though due-process requirements may be less

stringent when applied to prison regulations, a prison rule must still give the prisoner fair warning and notice of the prohibited conduct. See *Rios v. Lane*, 812 F.2d 1032, 1038 (7th Cir. 1987) (finding that prison rule 205, which prohibited "gang activities," did not give the prisoner fair notice that "the simple transcription of previously authorized information [(a listing of four Spanish radio stations and broadcast times)] onto a notecard" would violate that rule); *Selby*, 298 Ill. App. 3d at 614, 698 N.E.2d at 1109 (regulation that prohibited IDOC employees from socializing with prison inmates was not unconstitutionally vague). A rule or regulation violates due process if it "'leaves the regulated community unsure of what conduct is prohibited or fails to provide adequate guidelines to the administrative body charged with its enforcement.'" *Selby*, 298 Ill. App. 3d at 613, 698 N.E.2d at 1108, (quoting *Granite City*, 155 Ill. 2d at 163, 613 N.E.2d at 725).

Here, the regulation, while broad, gave plaintiff fair notice that his conduct was prohibited. Plaintiff, a purported gang member, sent a letter that contained information about other gang members both within and outside the facility. Plaintiff used gang nicknames and slang to convey this information. Defendant has a strong interest in preventing gang activity in the prison facilities. Rule 205 adequately informs prisoners that gang activity will not be permitted.

Further, this case is distinguishable from *Rios* because, in that case, the inmate was punished for relaying information that was explicitly authorized by the prison. See *Rios*, 812 F.2d at 1038. Here, plaintiff has alleged no such facts.

Consequently, plaintiff's complaint failed to state a claim for *mandamus* relief because he failed to allege a right to relief or defendant's duty to provide that relief.

III. CONCLUSION

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

Affirmed.