

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. 4-10-0453

Filed 6/27/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

LEON SNIPES,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Livingston County
EDDIE JONES, Acting Warden, and GUY PIERCE,	)	No. 08MR3
now Warden, Pontiac Correctional Center,	)	
Defendants-Appellees.	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

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

ORDER

*Held:* The appellate court held that (1) the trial court did not err by dismissing plaintiff's *mandamus* petition and (2) plaintiffs in a civil action are not entitled to effective assistance of counsel.

In January 2008, plaintiff, Leon Snipes, an inmate at the Pontiac Correctional Center, *pro se* filed a petition, naming defendant, Eddie Jones, acting warden of the Pontiac Correctional Center, and seeking an "emergency injunction" because (1) Jones (a) had withheld meals from him and (b) did not provide him adequate heat, bedding, showers, and shaving materials, and (2) he was (a) forced to take medication without due process of law and (b) wrongfully convicted. Shortly thereafter, the trial court appointed the public defender to represent Snipes.

In February 2008, Snipes filed a second petition for injunctive relief, requesting declaratory relief and asserting that (1) a conspiracy existed to torture and retaliate against him;

(2) issues existed with respect to his access to the prison law library; and (3) additional prison officials were involved in his alleged starvation. The trial court later recharacterized Snipes' petitions as a single petition for writ of *mandamus*.

In May 2008, Snipes *pro se* filed a motion for substitution of counsel, asserting that his appointed counsel had failed to take any steps to provide him with meaningful assistance. The trial court later denied that motion.

In September 2008, the public defender filed a motion to vacate his appointment, which the trial court also denied.

In July 2008, defendants filed a motion to dismiss Snipes' *mandamus* petition. In May 2010, the trial court granted that motion.

Snipes *pro se* appeals, arguing that (1) the trial court erred by dismissing his *mandamus* petition and (2) his counsel was ineffective. We disagree and affirm.

## II. BACKGROUND

As previously stated, the public defender filed a motion in September 2008 to vacate his appointment. While that motion was pending, the public defender filed a motion for leave to file an amended complaint, which the trial court later granted. Following an October 2008 hearing--the details of which are unclear from the record--the court denied the public defender's motion to vacate appointment.

In December 2008, the trial court granted the public defender's motion for extension to amend Snipes' complaint. (The public defender had asked for and received several extensions of time to file an amended complaint at various points throughout these proceedings, but never amended Snipes' petitions.) In April 2010, the public defender filed a response to

defendant's motion to dismiss, noting that if the court were to grant the defendant's motion, Snipes would "request 60 days to refile his petition to address any *pro se* deficiencies which may exist." In May 2010, the court granted defendant's motion without granting Snipes' request for leave to amend.

This appeal followed.

## II. ANALYSIS

Snipes argues that (1) the trial court erred by dismissing his *mandamus* petition and (2) his counsel was ineffective. We address Snipes' contentions in turn.

### A. Snipes' Claim that the Trial Court Erred by Dismissing His *Mandamus* Petition

Snipes *pro se* contends that the trial court erred by dismissing his *mandamus* petition. We disagree.

*Mandamus* relief is an extraordinary remedy that may be used to compel a public official to perform official duties that do not involve the exercise of his discretion. *Dye v. Pierce*, 369 Ill. App. 3d 683, 686-87, 868 N.E.2d 293, 296 (2006). "A court will not grant a writ of *mandamus* unless the [plaintiff] can demonstrate a clear, affirmative right to relief, a clear duty of the official to act, and clear authority in the official to comply with the writ." *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739, 759 N.E.2d 585, 588 (2001).

Generally, a reviewing court will reverse a trial court's decision to grant or deny *mandamus* relief only when that decision is against the manifest weight of the evidence or the court abused its discretion. *State Board of Elections v. Sheldon*, 354 Ill. App. 3d 506, 509, 821 N.E.2d 698, 701 (2004). However, when the court's judgment turns solely on a statute's

construction, which is a question of law, our review is *de novo*. *Villarreal v. Village of Schaumburg*, 325 Ill. App. 3d 1157, 1161, 759 N.E.2d 76, 80 (2001).

Our review of Snipes' writ of *mandamus* shows that he requested "injunctive relief." Injunctive relief, however, will be granted only after a petitioner proves " 'the existence of a lawful right, irreparable harm, and an inadequate remedy at law.' " *Behl v. Duffin*, 406 Ill. App. 3d 1084, 1093, \_\_ N.E.2d \_\_, \_\_ (2010), quoting *Tamalunis v. City of Georgetown*, 185 Ill. App. 3d 173, 189, 542 N.E.2d 402, 413 (1989). As the trial court observed when it denied Snipes' petition, Snipes failed to demonstrate that he had been irreparably harmed--that is, that Snipes was unable to have his complaints adjudicated by some other means. See *Hadley v. Department of Corrections*, 362 Ill. App. 3d 680, 688, 840 N.E.2d 748, 756 (2005) (" '[i]rreparable harm does not mean injury that is beyond repair or beyond compensation in damages but[,] rather[,] denotes transgressions of a continuing nature' " (quoting *Tamalunis*, 185 Ill. App. 3d at 190, 542 N.E.2d at 413)).

We note that as part of his response to defendants' motion to dismiss, Snipes requested additional time to amend his petition in the event the trial court granted defendants' motion. Normally, such leave to amend should be routinely granted. See *Grove v. Carle Foundation Hospital*, 364 Ill. App. 3d 412, 417, 846 N.E.2d 153, 157 (2006) (Illinois law maintains a liberal policy of allowing parties to amend their pleadings so parties may fully present their alleged cause or causes of action). Here, however, it does not appear from the record that Snipes will ever be able to amend his petition to state a cognizable claim. Moreover, Snipes has never, despite numerous opportunities to do so, presented the court with any proposed amendments. Under these circumstances, the court's decision to reject Snipes' request for

additional time for leave to amend was entirely reasonable. See *Sellers v. Rudert*, 395 Ill. App. 3d 1041, 1054-55, 918 N.E.2d 586, 597 (2009) ("failure to tender a proposed complaint significantly diminishes a court's ability to analyze the appropriate factors for determining whether leave should be granted").

#### B. Snipes' Claim that His Counsel Was Ineffective

Snipes also contends that his counsel was ineffective. We disagree.

The constitutional right to assistance of counsel applies *only* in criminal cases. *Marrero v. Peters*, 229 Ill. App. 3d 752, 754, 593 N.E.2d 1166, 1168 (1992). Because a writ of *mandamus* is civil in nature, indigent prisoners, such as Snipes, do not have a constitutional right to the appointment of counsel in those cases. *Marrero*, 229 Ill. App. 3d at 754, 593 N.E.2d at 1168.

Nevertheless, when appointed by the trial court to represent an indigent prisoner on a writ of *mandamus*, we expect counsel to exercise due diligence in representing their client. See *Marrero*, 229 Ill. App. 3d at 755, 593 N.E.2d at 1168. However, even if we were to conclude that the public defender failed to exercise due diligence in this case, there is no remedy for such a failure available to *mandamus* plaintiffs on direct appeal because, as previously explained, *mandamus* is a civil action. *Marrero*, 229 Ill. App. 3d at 755, 593 N.E.2d at 1168.

Accordingly, we reject Snipes' contention that his appointed counsel was ineffective.

### III. CONCLUSION

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

Affirmed.