



with disciplinary tickets in a timely fashion while he was on "mental–health watch." The failure allegedly deprived plaintiff of his right to 24-hour notice prior to a disciplinary hearing and his rights to call witnesses and prepare a defense. Five of the six tickets indicate plaintiff, "the offender," refused to sign them. At the adjustment-committee hearing, plaintiff allegedly stated he was unaware of the disciplinary tickets. The committee found plaintiff guilty and recommended revocation of good-conduct credits and other restrictions.

¶ 6 Plaintiff filed a grievance with the Administrative Review Board (Board) after his transfer to Pontiac. The Board reviewed the tickets and noted each indicated they were served anywhere from four to six days prior to the hearing on the infractions. The Board recommended the grievance be denied as plaintiff's alleged due-process violations were not substantiated.

¶ 7 In March 2011, the trial court found plaintiff's petition failed to state a valid claim for *mandamus*. Thereafter, plaintiff sought leave to file an amended petition for *mandamus*, alleging the Danville adjustment committee denied him his liberty interest and due-process rights. The court denied plaintiff's request for leave. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Plaintiff argues the trial court erred in dismissing his petition for *mandamus*, claiming he set forth a valid claim for relief. We disagree.

¶ 10 Initially, we note defendants have not filed a brief in response to plaintiff's *pro se* appeal. However, because the record is simple and the claimed errors are such that we can easily decide them without the aid of a brief from defendants, we will decide the case on the merits.

*Mason v. Snyder*, 332 Ill. App. 3d 834, 837-38, 774 N.E.2d 457, 460 (2002) (citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495

(1976)).

¶ 11 "Mandamus is an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty." *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464, 804 N.E.2d 546, 552 (2004). A petition for *mandamus* will be granted " 'only if a plaintiff establishes a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ.' " *Hadley v. Montes*, 379 Ill. App. 3d 405, 407, 883 N.E.2d 703, 705 (2008) (quoting *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555, 778 N.E.2d 701, 703 (2002)). The plaintiff bears the burden of demonstrating a clear, legal right to the requested relief and must set forth every material fact necessary to prove he is entitled to a writ of *mandamus*. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 812 N.E.2d 72, 75 (2004) (citing *Chicago Ass'n of Commerce & Industry v. Regional Transportation Authority*, 86 Ill. 2d 179, 185, 427 N.E.2d 153, 156 (1981)).

¶ 12 A trial court may *sua sponte* dismiss a *mandamus* petition found to be frivolous and without merit. *Mason*, 332 Ill. App. 3d at 842, 774 N.E.2d at 464. The dismissal of a *mandamus* petition for failure to state a cause of action is reviewed *de novo*. *Scotti v. Taylor*, 351 Ill. App. 3d 884, 887, 815 N.E.2d 10, 12 (2004). "Such dismissal will be held proper only if it clearly appears that no set of facts can be proved under the pleadings which will entitle the plaintiff to recover." *Scotti*, 351 Ill. App. 3d at 887, 815 N.E.2d at 12.

" 'Due process requires only that the inmate receive (1) advance written notice of the disciplinary charges at least 24 hours prior to hearing; (2) when consistent with institutional safety and correctional goals, an opportunity to call witnesses and present documen-

tary evidence in his defense; and (3) a written statement by the fact finder of the evidence relied on and the reasons for the disciplinary action.' " *Caruth v. Quinley*, 333 Ill. App. 3d 94, 98, 775 N.E.2d 224, 227 (2002) (quoting *Durbin v. Gilmore*, 307 Ill. App. 3d 337, 343, 718 N.E.2d 292, 297 (1999)).

¶ 13 In the case *sub judice*, plaintiff argued in his petition for *mandamus* that prison officials failed to give him 24-hour notice prior to his adjustment committee hearing and then only gave him a partial hearing. The record contains six disciplinary reports listing various offenses against plaintiff committed on November 2 and 3, 2010. The offenses included intimidation/threat, insolence, sexual misconduct, and disobeying a direct order. A box is checked on five of the six reports indicating plaintiff refused to sign. The record also contains the adjustment committee reports from November 9 and 12, 2010, the days when the disciplinary tickets were adjudicated. Plaintiff appeared at the hearings and pleaded not guilty to five of the six tickets. He gave several reasons for his conduct, claiming in part that "the bullshit nurses" were trying to get rid of him, were "making the shit up," and were doing "sex stuff to other inmates." The adjustment committee found plaintiff guilty, gave a basis for its decision, and recommended certain disciplinary action.

¶ 14 In his grievance, plaintiff addressed the disciplinary reports on the issues of sexual misconduct, intimidation, and insolence. He also argued Danville Correctional Center officials failed to allow the hearing investigator to review the charges. Although he cited the administrative code section that lists the 24-hour notice requirement (20 Ill. Adm. Code § 504.90 (eff. May 1, 2003)), he did not otherwise raise the issue. The Board reviewed the disciplinary

