

NOTICE  
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2011 IL App (4th) 100561-U

Filed 9/8/11

NOS. 4-10-0561, 4-10-0957 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

VANCE PATTON,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Morgan County
JORGE L. MONTES, Chairman, The Illinois Prisoner	)	Nos. 10MR38
Review Board; ERIC ALTHOFF; ED BOWERS; NANCY	)	10MR56
BRIDGES-MICKELSON; SALVADOR DIAZ; ROBERT	)	
L. DUNNE; CRAIG FINDLEY; DAVID FRIER; THOMAS	)	
L. JOHNSON; JESSE MADISON; MILTON MAXWELL;	)	Honorable
NORMAN M. SULA; and GERALDINE TYLE,	)	Richard T. Mitchell,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE McCULLOUGH delivered the judgment of the court.  
Justices Steigmann and Cook concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) In No. 4-10-0561, the reviewing court upheld the trial court's section 2-615 dismissal of plaintiff's declaratory judgment action as plaintiff was not entitled to (a) have his mandatory-supervised-release violation date adjusted; (b) credit for time served against his recommitment after revocation of his mandatory supervised release, as he already received credit against another sentence; or (c) have his projected release date from prison adjusted.  
(2) In No. 4-10-0957, the reviewing court dismissed plaintiff's appeal as not timely filed.
- ¶ 2 On December 20, 2007, plaintiff, Vance Patton, was placed on a three-year term of mandatory supervised release (MSR) following serving his burglary sentence in Cook County case No. 02-CR-180491. On December 26, 2007, Patton committed a burglary and on December 27, 2007, he was arrested. On January 14, 2010, in Cook County case No. 08-CR-118901, the trial court convicted Patton of the December 2007 burglary and sentenced him to six years'

imprisonment with credit for time served. Patton had been continuously incarcerated from December 27, 2007, through his conviction on January 14, 2010.

¶ 3 On January 18, 2010, Patton received a "No Warrant MSR Violation or Notice of Charges of Parole Violation" in No. 02-CR-180491 that alleged he had violated the terms of his MSR by committing the crime of burglary. The notice listed the violation date as *January 14, 2010*. On January 25, 2010, Patton's projected date of release from prison was listed as October 10, 2010. On February 3, 2010, defendants, the Prison Review Board and its members (PRB), issued an order revoking Patton's MSR. The order listed a violation date of *October 10, 2007*, rather than January 14, 2010. On February 5, 2010, Patton's projected date of release from prison was listed as August 19, 2011.

¶ 4 On February 19, 2010, Patton sent the PRB a letter challenging the calculation of the recommitment in No. 02-CR-180491 after revocation of MSR for his MSR violation. Patton explained that he was imprisoned on October 10, 2007, and was released on December 20, 2007, at which time he began serving his three-year MSR term; thus, his violation date could not be October 10, 2007. Patton's letter stated he had not violated his MSR until January 14, 2010, by which date he had served more than two years of the three-year MSR term. Patton argued he was thus entitled to credit for the period of December 20, 2007, through January 14, 2010, against any recommitment he received for violating his MSR. By Patton's calculation, the remaining balance of his MSR was 11 months and 7 days, without counting credit for good time. Therefore, Patton argued, the maximum recommitment he could receive for violating his MSR was 11 months and 7 days in prison, to run concurrent with his sentence for burglary. Patton asserted the PRB must change his violation date back to January 14, 2010, the date given in the initial notice of alleged

violation.

¶ 5 On February 22, 2010, the PRB denied Patton's request to restore the original violation date of January 14, 2010. However, the PRB conceded it had erred in initially listing the violation date as October 10, 2007. The PRB informed Patton the proper violation date was *December 26, 2007*, the day on which he committed the burglary offense while on MSR. Patton was ordered recommitted for a term equal to the remainder of his MSR, which the PRB informed him was three years minus the six days he was on MSR in December 2007 prior to violating the terms of MSR (2 years, 11 months, and 24 days eligible for good time). On March 4, 2010, the PRB informed Patton his projected date of release from prison was July 11, 2011 (1 year, 5 months, and 27 days from January 14, 2010), and that date remained his projected date of release.

¶ 6 In May 2010, Patton filed a complaint, Morgan County case No. 10-MR-38, seeking declaratory judgment in the circuit court and named the PRB chairman and its members as defendants. In his complaint, Patton sought an order from the court directing the PRB to reinstate an MSR violation date of January 14, 2010. He alternatively sought credit for time served between December 20, 2007, and January 14, 2010, against his recommitment in No. 02-CR-180491 for MSR violation and asked that his release date be revised accordingly. See 730 ILCS 5/3-3-9(a)(3)(i)(A), (a)(3)(ii) (West 2006). The PRB filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)), arguing Patton's request for declaratory judgment was improper, and the proper request for relief would have been a motion for *mandamus*. Regardless, the PRB claimed, if recharacterized as an action for *mandamus*, the complaint still failed to show Patton had a right to the relief requested. In July 2010, the trial court dismissed Patton's complaint with prejudice, and he filed an appeal,

docketed No. 4-10-0561.

¶ 7 While Patton's appeal of No. 10-MR-38 was pending with this court, he filed a petition of *mandamus* in the trial court, Morgan County case No. 10-MR-56, seeking the same relief previously sought in No. 10-MR-38. The PRB moved to dismiss the petition for *mandamus* pursuant to section 2-619(a)(4) of the Code (735 5/2-619(a)(4) (West 2010)), arguing the new petition was barred by *res judicata*, as it merely raised the same issues that had already been dismissed with prejudice in No. 10-MR-38. In the alternative, the PRB argued Patton was not entitled to the relief sought. On October 15, 2010, the trial court dismissed Patton's petition for *mandamus* with prejudice. On November 21, 2010, Patton filed a notice of appeal—37 days after his petition was dismissed by the court—docketed No. 4-10-0957. In June 2010, this court granted the PRB's motion to consolidate the pending appeals.

¶ 8 In No. 4-10-0561, defendant appeals the trial court's dismissal of No. 10-MR-38, arguing that (1) the PRB must reinstate January 14, 2010, as his MSR-violation date; (2) he is statutorily entitled to credit for time served between December 27, 2007, and January 14, 2010, against his recommitment in No. 02-CR-180491 (730 ILCS 5/3-3-9(a)(3)(ii) (West 2006)); and (3) the PRB must revise his projected date of release from prison. The PRB contends that declaratory judgment is not a proper grounds for the relief sought by Patton.

¶ 9 We review *de novo* the dismissal of defendant's complaint for declaratory judgment under section 2-615. *Roland Machinery Co. v. Reed*, 339 Ill. App. 3d 1093, 1097, 791 N.E.2d 716, 719 (2003). "The essential requirements of a declaratory judgment action are [as follows]: (1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests." (Internal quotation

marks omitted.) *Id.* A declaratory judgment allows the court to address a controversy after it has arisen but before steps have been taken that would give rise to claims for damages or other relief. *Id.* The purpose of a declaratory judgment is to allow the parties to "learn the consequences of their action before acting" in order to avoid future litigation. (Internal quotation marks omitted.) *Beahringer v. Page*, 204 Ill. 2d 363, 373, 789 N.E.2d 1216, 1223 (2003). Thus, declaratory relief is not proper to address past actions or to enforce a party's rights after the fact. See *Howlett v. Scott*, 69 Ill. 2d 135, 143, 370 N.E.2d 1036, 1039 (1977).

¶ 10 In his appeal, Patton seeks to compel the PRB to change his MSR violation date from December 20, 2007, to January 14, 2010. Based on this change, Patton contends he successfully served over two years (rather than six days) of his three-year MSR-violation term. In the alternative, Patton requests the PRB apply his credit for time served between December 27, 2007, and January 14, 2010, to the period of recommitment in No. 02-CR-180491 after revocation of MSR. Thus, Patton seeks to compel the PRB to act and also seeks to correct an alleged past error. However, a declaratory judgment is not the proper method for addressing Patton's requests for relief. Patton does not seek to have future rights declared but redress for alleged past wrongs. We, therefore, agree with the PRB and affirm the trial court's dismissal of Patton's petition for declaratory judgment.

¶ 11 Our review of No. 10-MR-38 does not end here, however. The PRB, in its motion to dismiss, recharacterized Patton's petition as a request for *mandamus*. Thus, we will address whether the trial court properly dismissed Patton's petition for *mandamus*.

¶ 12 "Generally, a reviewing court will only reverse a trial court's decision to grant or deny *mandamus* when it is against the manifest weight of the evidence or where 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, where the court's judgment turns solely on a statute's construction, which is a question of law, our review is *de novo*." *Id.* In the instant case, the question before the court involves statutory construction; therefore, we review the dismissal of Patton's petition *de novo*. The first rule of statutory construction is to give effect to the plain meaning of the statute. *People v. Smith*, 236 Ill. 2d 162, 166-67, 923 N.E.2d 259, 262 (2010).

¶ 13 *Mandamus* is an extraordinary and limited remedy to enforce, as a matter of right, the performance of official duties by a public official. *Torres v. Walker*, 364 Ill. App. 3d 666, 670, 848 N.E.2d 156, 159 (2006). An allegation of a violation of one's due-process rights states a cause of action in *mandamus*. *Id.* "A court will not grant a writ of *mandamus* unless the petitioner 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." (Internal quotation marks omitted.) *Id.* A writ of *mandamus* cannot be used to direct a public body to reach a particular decision or to exercise its discretion in a certain way. *Szewczyk v. Board of Fire & Police Commissioners*, 381 Ill. App. 3d 159, 163, 885 N.E.2d 1106, 1111 (2008).

¶ 14 Patton claims the PRB must adjust his MSR violation date, which would then require a recalculation of his sentence on recommitment in No. 02-CR-180491 and his projected release date from prison. Both parties agree that section 3-3-9 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-3-9 (West 2006)) is controlling as to the issues on appeal. Under section 3-3-9(a)(3) of the Unified Code (730 ILCS 5/3-3-9(a)(3) (West 2006)):

"If prior to expiration or termination of the term of \*\*\* mandatory supervised release, a person violates a condition set by the Prisoner

Review Board or a condition of \*\*\* mandatory supervised release under Section 3-3-7 of this Code to govern that term, the Board may:

\* \* \*

(3) revoke the \*\*\* mandatory supervised release and reconfine the person."

Violation of "any criminal statute of any jurisdiction" while on MSR provides the PRB with grounds to revoke. 730 ILCS 5/3-3-7(a)(1) (West 2006). In reconfining an individual who has violated the terms of MSR, the PRB can reconfine the individual to a term of imprisonment equal to the term of MSR he or she was serving "less the time elapsed between the release of the person and the *commission* of the violation" which resulted in the revocation of MSR.

(Emphasis added.) 730 ILCS 5/3-3-9(a)(3)(i)(B) (West 2006). Further, "the person shall be given credit against the term of reimprisonment \*\*\* for time spent in custody since he was \*\*\* released *which has not been credited against another sentence.*" (Emphasis added.) 730 ILCS 5/3-3-9(a)(3)(ii) (West 2006).

¶ 15 Under 3-3-7(a)(1) of the Unified Code (730 ILCS 5/3-3-7(a)(1) (West 2006)), Patton violated the terms of his MSR when he committed a burglary in December 2007, six days after his release on MSR. However, Patton claims under the notice he was provided on January 18, 2010, that the violation date was listed as January 14, 2010. The record shows this was a mistake. On the form Patton received, it stated the violation date is the "date of commission of [the] crime." Further, section 3-3-9(a)(3)(i)(B) states the violation date is the date of commission of the act that violates the terms of MSR. The initial mistake in completing the form notice does

not entitle Patton to have the date changed. The form to which Patton refers does not control the PRB's decision; it is merely a notice that he has been charged with violating his MSR. The PRB's official decision regarding the violation charge was made on February 3, 2010, at which time the PRB elected to revoke Patton's MSR and reconfine him for a three-year term less the time he successfully served on MSR (six days). The violation date was set at December 26, 2007, the date on which Patton committed a burglary. Accordingly, Patton was granted six days' credit against his reconfinement term for the period he successfully served MSR, December 20 through December 25, 2007.

¶ 16 Patton alternatively claims he is entitled to credit against his sentence for the time he served between December 20, 2007, and January 14, 2010. Patton relies on section 3-3-9(a)(3)(ii) of the Unified Code (730 ILCS 5/3-3-9(a)(3)(ii) (West 2006)) as well as this court's decision in *Jackson v. Fairman*, 94 Ill. App. 3d 131, 418 N.E.2d 200 (1981). However, Patton's interpretation of each is erroneous. Section 3-3-9(a)(3)(ii) allows credit for time served when credit has not been given against another sentence. In this case, Patton received credit for the time he served between December 27, 2007, and January 14, 2010, against his six-year sentence on his burglary conviction in No. 08-CR-118901; he is not entitled to credit against his reconfinement after revocation of MSR as well. Nor does this court's holding in *Jackson* support Patton's argument. In *Jackson*, 94 Ill. App. 3d at 132, 418 N.E.2d at 201, the petitioner was granted credit for time served between his arrest and conviction against his sentence for a new crime and not against his reconfinement after revocation of MSR.

¶ 17 Because Patton is not entitled to have his violation date changed or to credit for time served against his reconfinement for revocation of MSR, we need not reach the issue of

whether his projected release date must be adjusted.

¶ 18 Patton failed to show he was entitled to relief so he does not meet the first requirement in a petition for *mandamus*. Because Patton failed to plead adequate facts to state a claim for relief, we affirm the trial court's dismissal of his petition in No. 10-MR-38.

¶ 19 In No. 4-10-0957, Patton appeals the trial court's dismissal of his petition for *mandamus* filed in case No. 10-MR-56. He contends that he raised sufficient grounds for relief and the court erred in dismissing the petition. The PRB argues this court lacks jurisdiction to hear Patton's appeal as it was not timely filed. For the following reasons, we agree with the PRB.

¶ 20 Under Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008), a notice of appeal *must* be filed within 30 days of the entry of final judgment appealed. If a notice is not timely, an extension may be granted under Rule 303(d) (Ill. S. Ct. R. 303(d) (eff. May 30, 2008)) on a motion filed by the petitioner that pleads a reasonable excuse for failure to file a notice of appeal on time. This court has noted "[c]ompliance with the deadlines for appeals set forth in Supreme Court Rule 303 is mandatory and jurisdictional." *Berg v. White*, 357 Ill. App. 3d 496, 499, 828 N.E.2d 889, 892, (2005).

¶ 21 On October 15, 2010, the trial court dismissed case No. 10-MR-56. On November 21, 2010, Patton filed his appeal by delivering it to prison officials to be mailed. The time between the entry of final judgment and filing of the notice of appeal exceeded 30 days, and Patton did not petition the court for leave to file a late notice of appeal explaining why his notice of appeal was not filed on time. Therefore, we lack jurisdiction to consider Patton's appeal as to No. 10-MR-56.

¶ 22 For the reasons stated, we affirm the trial court's judgment in No. 10-MR-38 and dismiss Patton's appeal in No. 10-MR-56 for lack of jurisdiction.

¶ 23 No. 4-10-0561: Affirmed.

¶ 24 No. 4-10-0957: Appeal dismissed.