

Corrections, the Illinois Administrative Review Board, and/or the Illinois Prisoner Review Board. The *mandamus* petition asked the court to compel the defendants to dismiss the plaintiff's conviction of being an armed habitual criminal and give him day-for-day good-conduct credits. He also claimed that section 3-6-3(a)(2)(ii) of the Unified Code of Corrections (Code) (730 ILCS 5/3-6-3(a)(2)(ii) (West 2008)) violates the equal protection clause.

¶ 5 On December 9, 2010, the defendants filed a combined motion pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2006)) to dismiss the plaintiff's petition for *mandamus*. The defendants alleged that the action was barred by sovereign immunity and that the petition failed to state a claim for *mandamus* relief. On December 10, 2010, the plaintiff filed a motion for a default judgment and a reply to the defendants' motion to dismiss.

¶ 6 On December 13, 2010, after reviewing all the pleadings, the circuit court denied the plaintiff's motion for default judgment and granted the defendants' motion to dismiss. The plaintiff filed this timely appeal.

¶ 7 CONTENTIONS ON APPEAL

¶ 8 On appeal, the plaintiff argues that he should not be subject to the 85% rule for good-conduct credit because he is a nonviolent offender, and at the sentencing hearing, the judge failed to state that he was subject to the truth-in-sentencing law. Lastly, the plaintiff also asserts that section 3-6-3(a)(2)(ii) of the Code violates the equal protection clause.

¶ 9 In response, the defendants argue that the circuit court correctly dismissed the petition on the grounds that it lacked subject matter jurisdiction because the claim is barred by sovereign immunity. Moreover, they argue that the plaintiff does not have a clear right to receive day-for-day good-conduct credit and that the plaintiff has not

met the burden of demonstrating that section 3-6-3(a)(2)(ii) violates the equal protection clause. They contend that the circuit court's dismissal of the plaintiff's petition for *mandamus* should be affirmed.

¶ 10

STANDARD OF REVIEW

¶ 11

The grant of a motion to dismiss for a failure to state a cause of action or on the basis of defects or defenses in the pleadings is subject to *de novo* review. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007). As a consequence, the grant of a hybrid motion to dismiss filed pursuant to section 2-619.1 of the Code of Civil Procedure is also subject to *de novo* review. *McGee v. Snyder*, 326 Ill. App. 3d 343, 347 (2001). This section allows a litigant to file as a single motion in any combination a section 2-615 motion for an involuntary dismissal for a failure to state a cause of action (735 ILCS 5/2-615 (West 2006)), a section 2-619 motion for an involuntary dismissal based on certain defects or defenses (735 ILCS 5/2-619 (West 2006)), or a section 2-1005 motion for a summary judgment (735 ILCS 5/2-1005 (West 2006)). 735 ILCS 5/2-619.1 (West 2006). The defendants in the case at bar sought the dismissal of the plaintiff's petition for *mandamus* under sections 2-615 and 2-619. Where a dismissal is proper as a matter of law, the circuit court may be affirmed on any basis supported by the record. *Rodriguez*, 376 Ill. App. 3d at 433.

¶ 12

A section 2-615 motion to dismiss admits all the well-pleaded facts and attacks the legal sufficiency of the complaint. *Ford v. Walker*, 377 Ill. App. 3d 1120, 1124 (2007). Pursuant to that section, "[d]ismissal is appropriate only where, viewing the allegations in the light most favorable to the plaintiff, it is clear that no set of facts can be proved under the pleadings that will entitle the plaintiff to relief." *Gilchrist v. Snyder*, 351 Ill. App. 3d 639, 642 (2004). In ruling on a section 2-615 motion, the

court may take into consideration documents and exhibits that have been incorporated into the pleadings.

¶ 13 A section 2-619 motion to dismiss "admits the legal sufficiency of the complaint and raises defects, defenses or other affirmative matter which appears on the face of the complaint" and acts to defeat the plaintiff's claim (*Neppl v. Murphy*, 316 Ill. App. 3d 581, 584 (2000)), thus "enabl[ing] the court to dismiss the complaint after considering issues of law or easily proved issues of fact." *Id.* at 585.

¶ 14 ANALYSIS

¶ 15 We first address the defendants' argument that the circuit court did not have subject matter jurisdiction because the plaintiff's claim was barred by sovereign immunity. In cases such as this, a *mandamus* action to compel a public officer to perform a clear and mandatory duty is not an action against the State and, thus, is properly brought in the circuit court. *Senn Park Nursing Center v. Miller*, 104 Ill. 2d 169, 189 (1984). Therefore, we find that the circuit court did have subject matter jurisdiction, and the claim was not barred by sovereign immunity. Thus, we now turn to the merits of the plaintiff's petition for *mandamus*.

¶ 16 *Mandamus* is an extraordinary remedy by which an inmate can compel a public official to perform a mandatory duty that does not involve the exercise of discretion. *Turner-El v. West*, 349 Ill. App. 3d 475, 480 (2004). An order of *mandamus* will only be granted if a plaintiff can establish all of the following conditions: (1) a clear affirmative right to relief, (2) a clear duty of the public officer to act, and (3) clear authority on behalf of the public officer to comply with a *mandamus* order. *Rodriguez*, 376 Ill. App. 3d at 434. The burden lies on the plaintiff to demonstrate material facts to prove the required conditions. *Id.*

¶ 17 Here, the plaintiff seeks an order of *mandamus* to compel the defendants to

award him day-for-day good-conduct credit. Good-conduct credit for the plaintiff's particular offense is governed by section 3-6-3(a)(2)(ii) of the Code (730 ILCS 5/3-6-3(a)(2)(ii) (West 2008)), which states as follows: "[A] prisoner serving a sentence for *** being an armed habitual criminal *** shall receive no more than 4.5 days of good[-]conduct credit for each month of his or her sentence of imprisonment[.]" Therefore, an inmate serving a sentence for being an armed habitual criminal must serve 85% of his sentence.

¶ 18 This law was created by the legislature. The defendants are not responsible for creating the laws, and thus, they have no duty or authority to grant the plaintiff day-for-day good-conduct credit in conflict with the law of the statute. The defendants are in charge of the granting and revocation of good-conduct credit based on the plaintiff's behavior while incarcerated (see *People v. Castano*, 392 Ill. App. 3d 956, 960 (2009)), but the statute controls the potential credit limit that the plaintiff may receive. Moreover, section 3-6-3 (a)(2)(ii) of the Code does not invest the defendants with the power to consider whether the plaintiff is a nonviolent offender when awarding good-conduct credit. Therefore, the plaintiff has failed to establish that the defendants have the clear duty to act that *mandamus* relief requires.

¶ 19 The plaintiff also contends that he should receive day-for-day good-conduct credit because the circuit court failed to state that he was subject to the truth-in-sentencing law at the sentencing hearing pursuant to section 5-4-1(c-2) of the Code (730 ILCS 5/5-4-1(c-2) (West 2008)). We agree that section 5-4-1(c-2) of the Code does state that the judge shall state the approximate amount of time to be spent in custody. *Id.* However, the statute also states, "This statement is intended solely to inform the public, has no legal effect on the defendant's actual release, and may not be relied on by the defendant on appeal." *Id.* Therefore, the court's failure to state

