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).

2012 IL App (3d) 100844-U

Order filed January 19, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

TYRONE CALHOUN,	) Appeal from the Circuit Court
	) of the 12th Judicial Circuit,
Plaintiff-Appellant,	) Will County, Illinois,
	)
v.	)
	)
C. TARR, S. BASS, C/O KISSEL,	) Appeal No. 3-10-0844
L. GARBS, D. MANSFIELD, J. STEVEN,	) Circuit No. 09-MR-1182
T. McCANN, D. EDWARDS, L. DENNIS,	)
T. GARCIA, S. FUNK, J. MILLER, and	)
R. WALKER, JR.,	) Honorable
	) Marzell Richardson,
Defendants-Appellees.	) Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff's appeal is dismissed for want of jurisdiction.

¶ 2 Plaintiff, Tyrone Calhoun, filed a petition for writ of *mandamus/habeas corpus* relief with the trial court. The court dismissed plaintiff's petition for want of prosecution because plaintiff failed to prove return service of process. Plaintiff appeals and argues that he made proper service of process on the defendants, C. Tarr, *et al*. We lack jurisdiction to hear plaintiff's

arguments and dismiss the appeal.

¶ 3 FACTS

¶ 4 Plaintiff is an inmate in the Illinois Department of Corrections (IDOC). On November 16, 2009, plaintiff filed a *pro se* petition for writ of *mandamus/habeas corpus* relief against the defendants, all of whom were employees of the IDOC. Plaintiff's petition requested that the defendants be compelled to expunge his disciplinary record because the defendants purportedly held disciplinary proceedings against plaintiff which violated IDOC administrative guidelines. Plaintiff attempted to make service of process over the defendants several times but was unsuccessful. On September 23, 2010, the trial court dismissed the case for want of prosecution because plaintiff had failed to prove return service of process. Plaintiff appealed.

¶ 5 ANALYSIS

¶ 6 On appeal, plaintiff argues that the trial court erred in dismissing his action because the evidence shows that service of process was made on the defendants.

¶ 7 We note that the trial court dismissed plaintiff's case for want of prosecution on September 23, 2010. Pursuant to section 13-217 of the Code of Civil Procedure, plaintiff had an absolute right to refile the case within one year of the dismissal date. 735 ILCS 5/13-217 (West 2008). However, plaintiff chose to appeal the trial court's dismissal. We do not have jurisdiction to address the merits of plaintiff's appeal because a dismissal for want of prosecution is not a final order. See *Mann v. Upjohn Co.*, 324 Ill. App. 3d 367 (2001); see also Ill. S. Ct. R. 303(a) (eff. June 4, 2008). Although plaintiff's one-year refiling period has now expired, we note that plaintiff may file a section 2-1401 petition for relief from judgment. 735 ILCS 5/2-1401 (West 2008); see also *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489 (1998)

(expiration of the statutory refiling period for an action dismissed for want of prosecution makes the order final, and the only vehicle for reinstating case before the trial court is a petition seeking relief from judgment).

¶ 8 CONCLUSION

¶ 9 We dismiss plaintiff's appeal for want of jurisdiction, as plaintiff did not appeal a final order.

¶ 10 Appeal dismissed.