

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 (4th) 110067-U

Filed 1/6/12

NO. 4-11-0067

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DELBERT HEARD,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Livingston County
PATRICK QUINN, GOVERNOR, the State of Illinois;	)	No. 10MR8
MICHAEL P. RANDLE, Director, the Department of	)	
Corrections; and GUY PIERCE, Warden, Pontiac	)	Honorable
Correctional Center,	)	Jennifer H. Bauknecht,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE McCULLOUGH delivered the judgment of the court.  
Justices Appleton and Pope concurred in the judgment.

### ORDER

¶ 1 *Held:* Inmate was not entitled to judicial review of claims for which he did not exhaust administrative remedies *before* resorting to the courts.

¶ 2 On April 16, 2010, plaintiff, Delbert Heard, filed a *pro se* amended complaint pursuant to section 1983 of the Civil Rights Act (42 U.S.C. § 1983 (2010)) against defendants, Patrick Quinn, Governor, State of Illinois; Michael P. Randle, Director of the Department of Corrections; and Guy Pierce, Warden, Pontiac Correctional Center, alleging claims of unconstitutional conditions of confinement. On June 23, 2010, defendants moved to dismiss the complaint, which the trial court granted.

¶ 3 On appeal, plaintiff argues the trial court erred in dismissing his section 1983 complaint. We affirm.

¶ 4 A jury convicted plaintiff of the 1992 murders of Natalie Wilson, Kenneth Seals,

and Zita Jones. Finding no mitigating factors to preclude the imposition of the death penalty, and plaintiff having waived a jury for his sentencing hearing, the trial court sentenced plaintiff to death. Plaintiff appealed directly to the Illinois Supreme Court, which affirmed his conviction and death sentence. *People v. Heard*, 187 Ill. 2d 36, 47, 718 N.E.2d 58, 65 (1999).

Then-Governor Ryan subsequently commuted plaintiff's sentence to a term of natural life.

*People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 462, 804 N.E.2d 546, 550 (2004). Plaintiff is currently an inmate at Pontiac Correctional Center (Pontiac).

¶ 5 On April 16, 2010, plaintiff *pro se* filed an amended complaint and an amended motion for preliminary injunction. The complaint alleged constitutional and statutory violations and contained counts for deliberate indifference, negligence, and willful and wanton misconduct. Plaintiff alleged defendants disregarded safety risks associated with double-celling plaintiff. Plaintiff asserted that he had made oral complaints and filed formal grievances but did not provide details or attach any grievances challenging his double-celling at Pontiac.

¶ 6 On June 23, 2010, defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619.1 (West 2010)). As grounds for dismissal under section 2-615 (735 ILCS 5/2-615 (West 2010)), defendants argued the complaint must be dismissed for failure to state a claim under section 1983 (42 U.S.C. § 1983 (2010)) and Illinois tort law. Under section 2-619(a)(1) (735 ILCS 5/2-619(a)(1) (West 2010)), defendants argued the complaint must be dismissed because the circuit court lacked subject-matter jurisdiction based on sovereign immunity.

¶ 7 On November 5, 2010, the trial court granted defendants' motion to dismiss. This appeal followed.

¶ 8 A motion under section 2-619.1 of the Procedure Code allows a party to "combine a section 2-615 motion to dismiss based upon a plaintiff's substantially insufficient pleadings with a section 2-619 motion to dismiss based upon certain defects or defenses." *Edelman, Combs & Lattuner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164, 788 N.E.2d 740, 747 (2003). On appeal, the trial court's dismissal of a complaint under section 2-619.1 is reviewed *de novo*. *Morris v. Harvey Cycle & Camper, Inc.*, 392 Ill. App. 3d 399, 402, 911 N.E.2d 1049, 1052 (2009). A reviewing court may affirm on any basis warranted by the record. See *Reyes v. Walker*, 358 Ill. App. 3d 1122, 1124, 833 N.E.2d 379, 381 (2005).

¶ 9 In his complaint, plaintiff sought (1) a declaratory judgment that double-celling is unconstitutional, (2) a permanent injunction ordering plaintiff be housed in a single cell, and (3) various monetary damages. Defendants argue plaintiff has failed to exhaust his administrative remedies as to these claims because he did not file grievances regarding these issues.

¶ 10 "The doctrine of exhaustion of administrative remedies holds that a party aggrieved by an administrative decision cannot seek judicial review without first pursuing all available administrative remedies." *Canel v. Topinka*, 212 Ill. 2d 311, 320, 818 N.E.2d 311, 319 (2004). This requirement allows the administrative agency the opportunity to consider the facts of the case before it, use its expertise, and allow the aggrieved party to obtain relief without the need for judicial review. *Canel*, 212 Ill. 2d at 320-21, 818 N.E.2d at 319. The doctrine also applies to grievances filed by inmates, including those grievances alleging a constitutional violation. *Beahringer v. Page*, 204 Ill. 2d 363, 376, 789 N.E.2d 1216, 1225 (2003). We note an appellee may raise any point to support the judgment even though not raised in the trial court, "so long as the factual basis for such point was before the trial court." *Beahringer*, 204 Ill. 2d at

370, 789 N.E.2d at 1222.

¶ 11 In the case *sub judice*, plaintiff failed to exhaust his administrative remedies with respect to the alleged violations he complained of in his complaint. In his complaint, plaintiff asserted that he filed formal grievances prior to filing his amended complaint with the trial court. There is no evidence, however, in the record. Without a showing of exhaustion of remedies, plaintiff cannot establish a clear affirmative right to relief on these issues.

¶ 12 We note plaintiff attaches a letter to his reply brief referencing a grievance received by DOC officials on April 23, 2010 (approximately seven days *after* plaintiff filed the amended complaint in this case), regarding "administrative policy (Double ceiling 0500937)." On August 26, 2010 (approximately four months *after* plaintiff filed the amended complaint in this case), DOC officials stated that "the grievance has been ruled no merit; therefore no action will be taken." Documents appended to briefs that were not included in the record on appeal will be ignored. *Ford v. Walker*, 377 Ill. App. 3d 1120, 1124, 888 N.E.2d 123, 127 (2007).

¶ 13 We affirm the trial court's judgment dismissing plaintiff's amended complaint on the basis that plaintiff failed to prove exhaustion *before* resorting to the courts.

¶ 14 For the reasons stated, we affirm the trial court's judgment dismissing plaintiff's complaint.

¶ 15 Affirmed.