

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) 110337-U

Filed 4/30/12

NO. 4-11-0337

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DONALD L. GREEN,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
MICHAEL P. RANDLE, Director, The Department of)	No. 10MR665
Corrections; RICHARD S. BIRKEY, Warden, Illinois)	
River Correctional Center; LISA MADIGAN, Attorney)	Honorable
General; and PAT QUINN, Governor,)	John Schmidt,
Defendants-Appellees.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court committed no error in dismissing plaintiff's *mandamus* petition based upon allegations that he was improperly denied meritorious good-conduct credit.

¶ 2 Plaintiff, Donald L. Green, an inmate in the Illinois Department of Corrections (DOC), appeals the trial court's dismissal of his *pro se* petition for *mandamus* against defendants, Michael P. Randle, DOC's Director; DOC; Richard S. Birkey, warden of plaintiff's correctional facility; Illinois River Correctional Center; Lisa Madigan, Attorney General; and Pat Quinn, Governor. We affirm.

¶ 3 On August 12, 2010, plaintiff filed a *pro se* petition for *mandamus*, arguing defendants (1) improperly denied him meritorious good-conduct credits and (2) overcharged inmates on prison commissary items. To support his first claim, plaintiff attached a letter to his

petition, dated February 11, 2010, from DOC's Director, advising inmates that DOC had "suspended awarding Meritorious Good Time and Supplemental Meritorious Good Time while" DOC revised procedures "as required by recent legislation." Plaintiff maintained that, as a result of defendants' improper action, he would be subject to a lengthier sentence than permitted by statute. He requested the trial court find defendants' action of suspending or withholding meritorious good-conduct credit to be a clear violation of the Unified Code of Corrections (Code) and order defendants to award the credit.

¶ 4 On December 15, 2010, defendants filed a combined motion to dismiss plaintiff's *mandamus* petition pursuant to section 2-619.1 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619.1 (West 2008)). They argued defendant's claim for good-conduct credit was not ripe and he failed to state a claim that he was entitled to such credit. Further, defendants argued plaintiff lacked standing to challenge alleged commissary overcharges and his claim for money damages based on those alleged overcharges was barred by sovereign immunity. On March 29, 2011, the trial court entered a written order, granting defendants' motion to dismiss.

¶ 5 This appeal followed.

¶ 6 On appeal, plaintiff argues only that the trial court erred by dismissing his claim for *mandamus* relief based upon allegations that defendants improperly denied him good-conduct credits. He makes no argument with respect to his commissary-pricing claim and, as a result, we do not address that particular claim on appeal.

¶ 7 "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.'

[Citation]." *Carr v. Koch*, 2011 IL App (4th) 110117, ¶ 25, 960 N.E.2d 640, 644 (2011). The trial court's dismissal of a complaint pursuant to section 2-619.1 is subject to *de novo* review.

Carr, 2011 IL App (4th) 110117, ¶ 25, 960 N.E.2d at 644.

¶ 8 "Mandamus is an extraordinary remedy used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved." *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 38, 944 N.E.2d 337, 341 (2011). A plaintiff who seeks *mandamus* relief must establish "a clear right to the relief requested, a clear duty of the public official to act, and clear authority in the public official to comply with the writ." *Alvarez*, 241 Ill. 2d at 39, 944 N.E.2d at 341. The plaintiff must set forth every "material fact" necessary to prove his clear right to relief. *Neville v. Walker*, 376 Ill. App. 3d 1115, 1118, 878 N.E.2d 831, 833 (2007).

¶ 9 The Code provides that DOC "shall prescribe rules and regulations for the early release on account of good conduct of persons committed to [DOC]." 730 ILCS 5/3-6-3(a)(1) (West 2010). "The rules and regulations shall also provide that the Director may award up to 180 days additional good conduct credit for meritorious service in specific instances as the Director deems proper; except that no more than 90 days of good conduct credit for meritorious service shall be awarded to any prisoner who is serving a sentence for conviction of [certain specified felonies]." 730 ILCS 5/3-6-3(a)(3) (West 2010).

¶ 10 "The decision to award meritorious good conduct credit to qualifying prisoners is discretionary under section 3-6-3(a)(3)" of the Code and DOC's Director "is not required to grant the credit or even consider it." *Helm v. Washington*, 308 Ill. App. 3d 255, 257, 720 N.E.2d 326, 328 (1999). Courts have affirmed the dismissal of petitions for *mandamus* relief based upon allegations concerning the failure to award discretionary good-conduct credit. See *Helm*, 308 Ill.

App. 3d at 258-59, 720 N.E.2d at 328 (Third District) (Inmate's *mandamus* petition, alleging only that he qualified for consideration of discretionary good-conduct credit, failed to allege a clear duty to act on the part of the defendant and was correctly dismissed by the trial court); *Brewer v. Peters*, 262 Ill. App. 3d 610, 613, 633 N.E.2d 17, 19 (1994) (Fifth District) (The defendants do not have a clear duty to act where the award of good-conduct time and the decision to consider granting good-conduct time are discretionary under the statute).

¶ 11 Here, the award of good-conduct credit as set forth in section 3-6-3(a)(3) of the Code is clearly discretionary. As a result, defendants had no clear duty to act and award plaintiff credit toward his sentence. Plaintiff's *mandamus* petition is further deficient due to his failure to allege any facts showing his entitlement to even be considered for such credit.

¶ 12 Additionally, although *mandamus* may be used to compel the Director to exercise his discretion where a policy of denying credit amounts to a refusal to exercise that discretion (*Howell v. Snyder*, 326 Ill. App. 3d 450, 453, 760 N.E.2d 1009, 1011 (2001)), such circumstances are not present in the case at bar. Plaintiff's *mandamus* petition and its supporting attachments do not show a policy of refusing to exercise discretion. Instead, his allegations only indicate a temporary suspension in the awarding of meritorious good-conduct credit while procedures were being revised pursuant to legislation. The cases plaintiff cites in support of his claim are distinguishable from the facts in this case.

¶ 13 Here, plaintiff's allegations were insufficient to state a claim for *mandamus* relief. The trial court committed no error in granting defendants' motion to dismiss.

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

¶ 15 Affirmed.