

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) 110338-U

Filed 8/29/12

NO. 4-11-0338

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JAMES H. GODSEY,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
S.A. GODINEZ, Director, The Department of	)	No. 10MR383
Corrections; and ONA WELCH, Assistant Chief Records	)	
Officer, The Department of Corrections,	)	Honorable
Defendants-Appellees.	)	John W. Belz,
	)	Judge Presiding

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JUSTICE POPE delivered the judgment of the court.  
Justices Steigmann and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court's dismissal of *mandamus* complaint is affirmed.

¶ 2 In March 2011, the trial court dismissed plaintiff James H. Godsey's *mandamus* petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2010, Godsey filed a motion for leave to file a *mandamus* petition.

Godsey named as defendants Michael P. Randle, the then-Director of the Illinois Department of Corrections (DOC), and Ona Welch, the assistant chief records officer for DOC. Godsey argued DOC was not properly calculating his prison term pursuant to a DOC administrative directive. Godsey's *mandamus* petition sought a court order compelling DOC to recalculate his prison sentence pursuant to the administrative directive.

¶ 5 In the *mandamus* petition, Godsey alleged defendants had a clear duty to release him from prison on three independent grounds: "(1) [the] Illinois statute governing this case requires that [defendant] release petitioner in a timely fashion; (2) the mandatory language used in [DOC] administrative directive 01.07.400.II.F.2, F.8; and (3) [the] statute and directive creates a liberty interest for mandatory supervised release." The portion of the administrative directive at issue states: "Felony sentences shall be calculated on a 30 day per month basis; the number of days of the sentence shall be the numerator and 30 shall be the denominator." Illinois Department of Corrections Administrative Directive § 01.07.400.II.F.2 (eff. June 1, 2005).

¶ 6 Godsey argued defendant Welch arbitrarily calculated his sentence by calculating a year as having 365 days instead of 360 days. According to Godsey, DOC's failure to properly calculate his sentence based on the language of its administrative directive violated his due process rights. Godsey argued he should have been released to mandatory supervised release (MSR) on October 30, 2009.

¶ 7 On August 24, 2010, the Attorney General filed a motion to dismiss on behalf of Michael Randle, who was the only named defendant at that time who had been served. The motion noted the trial court sentenced Godsey on December 4, 2001, to 20 years on each of 3 counts of predatory criminal sexual assault and 15 years on each of 3 counts of criminal sexual assault. The sentences were to be served concurrently. Randle argued Godsey was required to serve the 20-year sentence, less good conduct credit and other credit he earned. According to the motion, "[t]he 360-day year and 30-day month formulas are not used to calculate a sentence when the sentence is in months or years. \*\*\* The formula is used when a sentence or jail credit is written in days. The formula allows the sentence of days to be converted to months and years."

As a result, Randle argued Godsey was not entitled to the relief he sought. According to Randle's memorandum of law in support of his motion to dismiss, Randle stated Godsey's projected out date was October 25, 2010. The Attorney General now acknowledges in her brief to this court felony sentences are not calculated in days.

¶ 8 In response to Randle's motion to dismiss filed on November 22, 2010, Godsey stated as of that date he had not met the residency terms for MSR and was still incarcerated at the Dixon Correctional Center.

¶ 9 On March 25, 2011, the trial court granted Randle's motion to dismiss, finding no basis shown for the relief Godsey requested. The court stated plaintiff cited no authority that every sentence to DOC should be calculated into a specific number of days.

¶ 10 This appeal followed. In March 2012, this court allowed the defendants' motion to substitute S.A. Godinez in the place of Michael P. Randle as director.

¶ 11 II. ANALYSIS

¶ 12 Godsey argues the trial court erred in dismissing his *mandamus* petition. Godsey's entire argument is based on moving his projected prison sentence release date from October 25, 2010, to September 5, 2010. Both of these projected out dates have long since passed. However, defendant argues the 50 extra days he had to wrongfully serve as part of his prison sentence should be deducted from his MSR term.

¶ 13 We review the dismissal of a petition for *mandamus* relief *de novo*. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 812 N.E.2d 72, 75 (2004). *Mandamus* relief is an extraordinary remedy. *Lucas*, 349 Ill. App. 3d at 998, 812 N.E.2d at 75. *Mandamus* relief will only be awarded if a plaintiff can establish (1) a clear, affirmative right to relief, (2) the public

official has a clear duty to act, and (3) the public authority has clear authority to comply with the writ. *Lucas*, 349 Ill. App. 3d at 998, 812 N.E.2d at 75. A plaintiff must set forth every material fact necessary to show he or she is entitled to a writ of *mandamus*, and the plaintiff bears the burden to establish a clear, legal right to it. *Lucas*, 349 Ill. App. 3d at 998, 812 N.E.2d at 75.

¶ 14 The State argues this appeal is moot. According to the State, dismissing Godsey's appeal for mootness would have no collateral consequences because if he were released from custody, violated the terms of his confinement and then was recommitted, a retroactive award of additional credit would have no effect on the duration of his confinement. However, if Godsey were reconfined during his period of MSR and this court were to determine he should have been released from prison 50 days earlier than the date his term of imprisonment ended, Godsey could argue those 50 days he was imprisoned should be applied to his MSR confinement. We make no ruling on the merits of that potential argument. However, we conclude the potential merits of this argument defeat the State's mootness claim. See *People ex. rel. Yoder v. Hardy*, 116 Ill. App. 3d 489, 492, 451 N.E.2d 965, 967 (1983).

¶ 15 That being said, we find the trial court did not err in dismissing Godsey's *mandamus* petition. Godsey established neither a clear, affirmative right to relief nor that DOC had clear authority to deduct 50 days off of his prison sentence pursuant to an administrative directive. Godsey does not argue the calculation of his out date violated a statute or rule. Instead, his argument centers on DOC's alleged failure to follow an administrative directive. Unlike statutes or administrative rules, an administrative directive does not have the force of law. *Lucas v. Department of Corrections*, 2012 IL App (4th) 110004, ¶ 14, 967 N.E.2d 832. Further, Godsey fails to establish how DOC has any authority to change the definition of what constitutes

a year with regard to a prison sentence. According to section 1.10 of the Statute on Statutes, "'Month' means a calendar month, and the word 'year,' a calendar year unless otherwise expressed." 5 ILCS 70/1.10 (West 2008). A calendar year consists of 365 days in non-leap years and 366 days in leap years.

¶ 16

### III. CONCLUSION

¶ 17 For the reasons stated, we affirm the trial court's order dismissing Godsey's *mandamus* petition.

¶ 18 Affirmed.