

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) 111080-U

Filed 6/26/12

NO. 4-11-1080

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ALLAN AUSTIN,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	McLean County
GEORGE MICHAEL PRALL,)	No. 11MR349
Defendant-Appellee.)	
)	Honorable
)	Scott Drazewski,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court, *sua sponte*, properly struck plaintiff's motion for leave to file a petition for *mandamus*.

¶ 2 I. BACKGROUND

¶ 3 On November 21, 2011, plaintiff filed a "Motion for Leave to Proceed in *Forma Pauperis*," which also asked for leave to file a petition for *mandamus*. On November 23, 2011, the trial court filed a letter opinion granting the Motion to Proceed in *Forma Pauperis* but *sua sponte* striking the *mandamus* petition as frivolous. On December 7, 2011, plaintiff filed a notice of appeal. On March 19, 2012, this court received a letter from the office of the Attorney General, advising that because the Attorney General represents no party on appeal, she has no involvement in the case pending before this court.

¶ 4

II. ANALYSIS

¶ 5

A trial court may, on its own motion, dispose of a matter when it is clear on its face that the requesting party is not entitled to relief as a matter of law. *People v. Vincent*, 226 Ill. 2d 1, 12, 871 N.E.2d 17, 25 (2007); *Bilski v. Walker*, 392 Ill. App. 3d 153, 156-57, 924 N.E.2d 1034, 1037-38 (2009). Adequate procedural safeguards prevent erroneous *sua sponte* terminations. A section 2-1401 petitioner whose petition has been disposed of by the court *sua sponte* could file a motion for rehearing under section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2010)). In addition, a litigant whose cause of action has been terminated by the court *sua sponte* may bring an appeal, which invites *de novo* review of the legal sufficiency of the complaint. *Vincent*, 226 Ill. 2d at 13, 871 N.E.2d at 25-26. *Sua sponte* dismissal of a complaint is an extraordinary action. We have cautioned trial courts to provide explanations before entering such a dismissal. *Bilski*, 392 Ill. App. 3d at 158, 924 N.E.2d at 1039. The trial court provided such explanations in its thorough letter opinion here.

¶ 6

The trial court properly explained the principles underlying *mandamus* as follows:

"*Mandamus* is an extraordinary remedy awarded in the exercise of judicial discretion according to legal principles. It is appropriate when necessary to compel a public officer to perform purely ministerial duties, requiring no exercise of judgment on the part of the public officer. *Mandamus* will not issue to direct the manner of performance of an action requiring the exercise of discretion, but is available only when a plaintiff has set forth every material fact needed to prove that

he had a clear, legal right and is entitled to the performance of the act he seeks to compel."

¶ 7 Plaintiff argues that he should not have received consecutive sentences on the three counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West Supp. 1997)) in McLean County case No. 98-CF-482, because those offenses occurred at the same time and involved the same victim. We note this court affirmed defendant's conviction on direct appeal. *People v. Austin*, No. 4-99-0188 (Nov. 16, 2000) (unpublished order under Supreme Court Rule 23). Defendant sought various forms of postconviction relief, which were denied. See *People v. Austin*, No. 4-02-0244 (March 11, 2003) (unpublished order under Supreme Court Rule 23) (reversing summary dismissal on untimeliness grounds); *People v. Austin*, No. 4-03-1034 (May 9, 2005) (unpublished order under Supreme Court Rule 23) (affirming second-stage dismissal as untimely where defendant failed to allege facts sufficient to establish delay was not result of his culpable negligence); *People v. Austin*, No. 4-06-0013 (Mar. 7, 2008) (unpublished order under Supreme Court Rule 23) (affirming denial of defendant's motion for leave to file successive postconviction petition); *People v. Austin*, Nos. 4-05-0953, 4-06-0520, 4-06-0725 cons. (May 15, 2008) (unpublished order under Supreme Court Rule 23) (affirming striking of defendant's motion to dismiss his indictment (No. 4-05-0953), dismissal of his section 2-1401 petition (No. 4-06-0520), and dismissal of his motion to vacate judgment and void sentence (No. 4-06-0725)).

Plaintiff concedes that the victim alleged the sexual penetration as follows: vaginal, fellatio, then again vaginal. Multiple convictions are improper if they are based on precisely the same physical act. However, multiple convictions are permitted in all other cases where a defendant has committed several acts, despite the interrelationship of those acts. *People v. King*, 66 Ill. 2d

551, 566, 363 N.E.2d 838, 844 (1977). Several March 1998 acts were involved here. As the trial court pointed out, consecutive sentences are required if one of the offenses was a Class X felony "and the defendant inflicted severe bodily injury." 730 ILCS 5/5-8-4(a) (West 1998). Plaintiff argues he did not cause severe injury here, but the victim received a cut lip, bruises to the face, ear, and neck, and a vaginal tear. The sentencing court clearly acted properly in determining plaintiff caused a severe injury.

¶ 8 Plaintiff argues he should not have received a consecutive sentence on the home invasion count (720 ILCS 5/12-11(a)(2) (West 1996)) because that charge contained elements of the aggravated-criminal-sexual-assault charges. However, criminal sexual assault is not a lesser-included offense of home invasion. Defendant's convictions of both offenses must stand. *People v. Bouchee*, 2011 IL App (2d) 090542 ¶ 19, 962 N.E.2d 15, 20.

¶ 9 III. CONCLUSION

¶ 10 We affirm the trial court's order denying plaintiff's petition for leave to file a petition of *mandamus* and striking the petition for *mandamus* with prejudice.

¶ 11 Affirmed.