

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) 111111-U

Filed 8/24/12

NO. 4-11-1111

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

COREY A. TAYLOR,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
JOSEPH ROSE, EDDIE JONES, RUANE TANNER,)	No. 11L264
DANIEL MONTI, YOLANDE JOHNSON, and)	
SALVADOR GODINEZ,)	Honorable
Defendants-Appellees.)	John Schmidt,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff, an inmate at Tamms Correctional Center, was not entitled to relief as a matter of law on his claim the hearing on his continued confinement in disciplinary segregation provided under *Westefer v. Snyder*, 725 F. Supp. 2d 735, 793-94 (S.D. Ill. 2010), was inadequate when the order authorizing the hearing had been vacated in *Westefer v. Neal*, 682 F.3d 679, 686 (7th Cir. 2012).

¶ 2 Plaintiff, Corey A. Taylor, an inmate with the Department of Corrections (DOC), appeals the trial court's *sua sponte* dismissal of his *pro se* complaint, which seeks injunctive and declaratory relief as well as damages from defendants, various DOC officials and employees. In his complaint, plaintiff alleges defendants failed to comply with the injunction issued in *Westefer v. Snyder (Westefer I)*, 725 F. Supp. 2d 735, 793-94 (S.D. Ill. 2010), when they approved his continued placement at the closed maximum security prison (CMax) at Tamms Correctional Center (Tamms). The court concluded plaintiff's complaint was frivolous and without merit and

dismissed it. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In October 2011, plaintiff filed a *pro se* complaint under section 1983 of the Civil Rights Act (42 U.S.C. § 1983 (2006)), seeking declaratory and injunctive relief as well as damages. This appeal follows a *sua sponte* dismissal of that complaint.

¶ 5 In his complaint, plaintiff alleged in August 1998, employees of the Pontiac Correctional Center prepared and signed a transfer report for plaintiff's transfer from Pontiac Correctional Center to Tamms. The transfer report contained "the reason(s) for plaintiff's transfer," but plaintiff did not specify the listed reasons in his complaint. According to plaintiff's complaint, the system-wide database indicates plaintiff was transferred to Tamms for nondisciplinary reasons. Plaintiff alleged, before his transfer, defendants did not provide plaintiff notice of the charges against him or hold a hearing on those charges.

¶ 6 According to plaintiff's complaint, in July 2010, a federal district court entered an order granting injunctive relief regarding all past, present, and future inmate transfers to Tamms. See *Westefer I*, 725 F. Supp. 2d at 793-94. The court found existing and proposed DOC procedures for placing inmates at Tamms CMax were inadequate to protect the liberty interests of "inmates in avoiding confinement in supermax custody." *Westefer I*, 725 F. Supp. 2d at 773, 784-86. The court ordered hearings not only for inmates who may be transferred in the future to Tamms, but also for those who had already been transferred to Tamms CMax before the court's order. See *Westefer I*, 725 F. Supp. 2d at 793-94. The injunction required each inmate be provided written notice of the reasons for the Tamms placement at least 48 hours in advance of the hearing. See *Westefer v. Neal (Westefer II)*, 682 F.3d 679, 683 (7th Cir. 2012). The inmate

was to be afforded an opportunity to refute the reasons provided in the notice, including the right to ask the committee to interview persons with relevant information. *Westefer II*, 682 F.3d at 683.

¶ 7 In his complaint, plaintiff alleged defendants served him with written notice of the charges against him and of the transfer hearing on August 13, 2010. Plaintiff alleged the notice provided only the following: "[r]ecords indicate that you were transferred to Tamms in disciplinary segregation status due to your pattern of violence, citing numerous charges of assault." The notice did not provide more specific details of the charges. On August 16, 2010, plaintiff submitted a written request for witnesses who could attest to the August 1998 transfer report. Plaintiff also asked the database information be considered. On August 25, 2010, a hearing was held before defendants, Ruane Tanner and Daniel Monti, who served as the transfer review committee. According to plaintiff's complaint, plaintiff objected at the hearing to the inadequate written notice of the charges and the denial of requested witnesses. Despite plaintiff's request, Tanner and Monti did not provide plaintiff more specific factual information regarding the alleged offenses that constituted the "pattern of violence."

¶ 8 Plaintiff's complaint further alleged DOC officials ultimately determined in December 2010 plaintiff would remain at CMax in Tamms. Plaintiff summarized the December 2010 report as stating defendants considered plaintiff's charges of "dangerous contraband," "numerous charges of staff assault," and "a pattern of violence" in reaching their decision. Plaintiff maintained he exhausted his administrative remedies before filing his complaint in the trial court.

¶ 9 In addition, plaintiff's complaint further asserted he was denied due process.

Plaintiff alleged his current disciplinary segregation release date in 2037 and the August 25, 2010, hearing he was provided was the only one the current law required. Plaintiff contended, because of defendants' actions, he must stay at Tamms CMax indefinitely. Specifically, plaintiff maintained the charges of "pattern of violence" and "numerous charges of assault" were inadequate. Plaintiff argued defendants should have considered the evidence regarding his August 1998 transfer to Tamms. Plaintiff also maintained defendants did not include the "dangerous contraband" charge, listed as a reason for the decision to keep plaintiff at Tamms, in the notice they provided him.

¶ 10 In November 2011, the trial court dismissed plaintiff's complaint, finding "the pleadings [were] frivolous and without merit." This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiff contends the trial court erroneously dismissed his suit *sua sponte*. Plaintiff, relying on the class-action suit in *Westefer I*, maintains the facts in his case are analogous to those in *Westefer I* and defendants denied him the procedural safeguards he was owed when determining his placement at Tamms. Plaintiff asserts his claims are not frivolous.

¶ 13 Trial courts have "authority under the principles of civil practice and procedure to *sua sponte* dismiss" lawsuits when it is clear on the face of the pleading the filing party is not entitled to relief as a matter of law. *Bilski v. Walker*, 392 Ill. App. 3d 153, 156, 924 N.E.2d 1034, 1038 (2009). We review *de novo* the dismissal of plaintiff's complaint. See *People v. Vincent*, 226 Ill. 2d 1, 14, 871 N.E.2d 17, 26 (2007) ("Whether a trial court correctly enters judgment on pleadings or dismisses a complaint is subject to the same *de novo* standard of review on appeal.").

¶ 14 Plaintiff bases his claims on the *Westefer I* decision. Plaintiff acknowledges he, individually, lost a challenge to his September 1998 transfer to Tamms following a jury trial, but he points to *Westefer I* as giving him the right to a hearing on his continued confinement at Tamms. In the argument portion of his brief, plaintiff refers to *Westefer I* as "giving rise to" his claim.

¶ 15 *Westefer I* is no longer good law. Recently, in *Westefer II*, 682 F.3d at 686, the Seventh Circuit vacated the district court's injunction. On appeal, the court considered the DOC defendants' argument the "scope and specificity of the injunction exceed[ed] what is required to remedy the due-process violation, contrary to the terms of the Prison Litigation Reform Act, *** 18 U.S.C. § 3626(a)(1)(A) ***." *Westefer II*, 682 F.3d at 681. The court determined the injunction went "well beyond what the Supreme Court has said is constitutionally required" and vacated it. See *Westefer II*, 682 F.3d at 686. The court concluded "[i]t is up to [DOC] to craft transfer-review procedures that meet the requirements of due process" and the district court "should do no more than to order [DOC] officials to do so in general terms and to verify that the plan they submit satisfies the relevant constitutional standards." *Westefer II*, 682 F.3d at 686.

¶ 16 While *Westefer II* was pending in the Seventh Circuit, the legislature amended the administrative code to provide transfer-review hearings. See 20 Ill. Adm. Code 505.60, amended at 34 Ill. Reg. 19499 (eff. Dec. 1, 2010). The administrative code, unlike the injunction issued in *Snyder*, does not afford defendant, an inmate *already* serving time in disciplinary segregation at Tamms, a hearing until he has served his term of disciplinary segregation. See 20 Ill. Adm. Code § 505.60(a)(1), amended at 34 Ill. Reg. 19499, 19504 (eff. Dec. 1, 2010). Plaintiff is not entitled to a hearing, and he has provided no argument explaining any other basis for which he would be

entitled to such a hearing. Plaintiff is not entitled to relief as a matter of law.

¶ 17

III. CONCLUSION

¶ 18

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

¶ 19

Affirmed.