

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) 111118-U

Filed 3/29/12

NO. 4-11-1118

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

GEORGE RODRIGUEZ,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
S.A. GODINEZ, Director, The Department of)	No. 11MR646
Corrections,)	
Defendant-Appellee.)	Honorable
)	John Schmidt,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff's petition for *mandamus* and attachments fail to allege any entitlement to relief, the trial court's finding the petition was frivolous and without merit was proper, and the court did not error by dismissing it *sua sponte*.

¶ 2 Plaintiff, George Rodriguez, an inmate with the Department of Corrections (DOC), appeals the Sangamon County circuit court's *sua sponte* dismissal of his *pro se mandamus* petition against defendant, S.A. Godinez, director of DOC (Director). We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 19, 2011, plaintiff filed his petition for *mandamus*, in which he stated he was serving a nine-year-prison sentence for unlawful possession of a controlled substance with the intent to deliver (People v. Rodriguez, No. 07-CF-4684 (Cir. Ct. Lake Co.)). Attached to the *mandamus* petition is a copy of his sentencing judgment. No other documents from his

criminal case are included in the record on appeal. Plaintiff also attached a copy of (1) this court's decision in *Howell v. Snyder*, 326 Ill. App. 3d 450, 760 N.E.2d 1009 (2001), and (2) title 20, section 107.210, of the Illinois Administrative Code (20 Ill. Adm. Code 107.210 (2011)), which addresses the awarding of meritorious good-time credits.

¶ 5 In his petition, plaintiff alleged the Director was responsible for obeying and enforcing section 3-6-3 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3 (West 2010) (text of section effective July 1, 2011)), the trial court's order in the "sentencing mittimus," and the *Howell* decision. Moreover, he contended the Director refused to use or exercise his discretion and continued to ignore demands to award plaintiff 180 days of good-time credit by suspending awards for the past two years. Plaintiff requested an order of *mandamus*, (1) compelling the Director to obey state laws and change the illegal policy to deny credit, (2) enforcing and obeying the sentencing order, (3) awarding him 180 days of good-time credit because the trial court approved of it, and (4) granting him permission to be included in a class-action suit (*Murillo v. Randle*, No. 11-MR-289 (Cir. Ct. Sangamon Co.)).

¶ 6 On November 30, 2011, the trial court *sua sponte* dismissed plaintiff's petition, finding it was frivolous and without merit. On December 20, 2011, plaintiff filed his timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008), and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 7 II. ANALYSIS

¶ 8 A. Authority for *Sua Sponte* Dismissal and Standard of Review

¶ 9 Plaintiff challenges the trial court's *sua sponte* dismissal on its merits and does not

challenge the trial court's authority to do so. We note that, in similar circumstances, the supreme court and this court have found a trial court does have authority to *sua sponte* dismiss an inmate's frivolous petition. See *Hennings v. Chandler*, 229 Ill. 2d 18, 31, 890 N.E.2d 920, 927 (2008) (inmate's complaint for an order of *habeas corpus*); *People v. Vincent*, 226 Ill. 2d 1, 13, 871 N.E.2d 17, 26 (2007) (inmate's petition for relief under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2002))); *Bilski v. Walker*, 392 Ill. App. 3d 153, 156, 924 N.E.2d 1034, 1038 (2009) (claim under section 1983 of the federal Civil Rights Act (42 U.S.C. § 1983 (1994))); *Owens v. Snyder*, 349 Ill. App. 3d 35, 45, 811 N.E.2d 738, 747 (2004) (*mandamus* complaint). We review *de novo* whether a trial court's *sua sponte* dismissal was proper. *Vincent*, 226 Ill. 2d at 14, 871 N.E.2d at 26.

¶ 10

B. Good-Time Credit

¶ 11 In this case, plaintiff has brought a *mandamus* action to obtain 180 days of good-time credit. Regarding *mandamus* actions, this court has stated the following:

" *Mandamus* relief is an extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public official where the official is not exercising discretion. A court will not grant a writ of *mandamus* unless the petitioner can demonstrate a clear, affirmative right to relief, a clear duty of the official to act, and clear authority in the official to comply with the writ. The writ will not lie when its effect is to substitute the court's judgment or discretion for the official's judgment or discretion. *Mandamus* relief, therefore, is not appropriate to regulate a course of official conduct or to enforce

the performance of official duties generally.' " *Dye v. Pierce*, 369 Ill. App. 3d 683, 686-87, 868 N.E.2d 293, 296 (2006) (quoting *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739, 759 N.E.2d 585, 588 (2001)).

In *Howell*, 326 Ill. App. 3d at 453, 760 N.E.2d at 1011, this court recognized *mandamus* may be used to compel the Director to exercise his discretion.

¶ 12 In his petition, plaintiff asserts the Director has suspended the award of good-time credit for two years and has not awarded him the 180 days of good-time credit that the trial court ratified in its sentencing order. Plaintiff seeks enforcement of section 3-6-3 of the Unified Code (730 ILCS 5/3-6-3 (West 2010) (text of section effective July 1, 2011)), "the judge's order in sentencing mittimus," and our decision in *Howell*.

¶ 13 Plaintiff's February 2008 sentencing judgment states defendant "shall receive good time credit as administered by the Department of Corrections." The sentencing judgment is consistent with Illinois law, which provides a trial court has no control over the manner in which a defendant's good-conduct credit is earned or lost, as it is within DOC's discretion to calculate what credit, if any, a defendant will receive. *People v. Davis*, 405 Ill. App. 3d 585, 603, 940 N.E.2d 712, 728 (2010). Thus, the trial court's judgment does not provide plaintiff is entitled to 180 days of good-time credit as alleged. Accordingly, plaintiff is not entitled to any *mandamus* relief based on the trial court's sentencing order.

¶ 14 In his brief, plaintiff specifically cites to section 3-6-3(a)(3) of Unified Code (730 ILCS 5/3-6-3(a)(3) (West 2010) (text of section effective July 1, 2011)). To the extent plaintiff suggests he is entitled to meritorious good-time credit under that section and the Director has failed to exercise any discretion under that section, plaintiff has not alleged any facts in his

petition showing his entitlement to be considered for such good-time credits. Section 3-6-3(a)(3) (730 ILCS 5/3-6-3(a)(3) (West 2010) (text of section effective July 1, 2011)) only provides a potential for meritorious good-time credit that a defendant may receive for conduct the Director deems proper. "The award of any good-conduct credit is contingent upon a defendant's behavior in prison." *Davis*, 405 Ill. App. 3d at 603, 940 N.E.2d at 728. Without setting forth any conduct warranting consideration of meritorious good-time credit, plaintiff's petition fails to allege he is entitled to have the Director exercise discretion as to his meritorious conduct. Accordingly, plaintiff has failed to state a cause of action for *mandamus* on this claim as well.

¶ 15 Accordingly, the trial court properly found plaintiff's petition was frivolous and patently without merit, and thus dismissal of the petition was proper.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we affirm the Sangamon County circuit court's dismissal of plaintiff's *mandamus* petition.

¶ 18 Affirmed.