



¶ 4 On November 14, 2011, Edens filed a *pro se* complaint seeking *mandamus* relief. According to the complaint, Edens, an inmate at the Dixon Correctional Center, is serving a 65-year sentence imposed on December 20, 1985. Defendants informed Edens his projected outdate is October 2, 2016. Edens asserted defendants have failed to credit him for eight "leap year days" he will serve during his sentence and therefore, his outdate should be September 24, 2016. Edens further alleged defendants "found support for their inane position pursuant to" *People v. Foreman*, 361 Ill. App. 3d 136, 157, 836 N.E.2d 750, 768 (2005). Citing section 3-6-3 of the Unified Code of Corrections (Code) (Ill. Rev. Stat. 1985, ch. 38, ¶ 1003-6-3), Edens maintained DOC's approach in not counting a prisoner's time served on February 29 is "reprehensible, illegal, and unconstitutional." Edens asked the trial court to order defendants to credit him for the eight leap-year days and recalculate his anticipated outdate. Edens further asked the trial court to order DOC to use a "sensible calculation" of 366 days each year, including non-leap years, to provide inmates their required credit.

¶ 5 Attached to the complaint is a copy of Edens' grievance. At the bottom of his grievance, a DOC counselor wrote the following response on October 24, 2011:

"I spoke to the Records Office about this issue. They stated you are [entitled] to every day prior to trial but per '*People vs. Foreman*' you do not get an extra day for leap year after sentencing. There are only 365 days in a regular year and [DOC] calculates 30 days for every calendar month of the year."

The grievance officer's report further cited the "*Forman*" [*sic*] case. The director's office concurred in December 2011.

¶ 6 On January 3, 2012, the trial court dismissed Edens' complaint, finding the claims frivolous. This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 On appeal, Edens contends the trial court erroneously found his claim frivolous and dismissed his suit. He asserts defendants improperly deprived him of his statutorily mandated day-for-day good-conduct credit. Defendants did not file an appellee brief; the record indicates they have not been served with Edens' complaint.

¶ 9 This court, in *Powell v. Lewellyn*, 2012 IL App (4th) 110168, ¶¶ 11-12, 2012 WL 3985891, at \*2, recently determined a trial court acted prematurely when it dismissed *sua sponte* a *pro se* petition for injunctive relief and damages. Only 13 days separated the petition's filing and the *sua sponte* dismissal of it, and defendants had not yet been served with notice or a summons. *Powell*, 2012 IL App (4th) 110168, ¶ 10, 2012 WL 3985891, at \*2. We concluded the case was not ripe for adjudication because the petitioner had not been given a reasonable time to obtain service on the defendants and the defendants had not been given the opportunity to respond. *Powell*, 2012 IL App (4th) 110168, ¶ 11, 2012 WL 3985891, at \*2.

¶ 10 In reaching the decision in *Powell*, this court relied upon the Illinois Supreme Court's decision in *People v. Laugharn*, 233 Ill. 2d 318, 323-24, 909 N.E.2d 802, 805 (2009). In *Laugharn*, our supreme court vacated a *sua sponte* order dismissing a prisoner's *pro se* petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2004)). *Laugharn*, 233 Ill. 2d at 323-24, 909 N.E.2d at 805. The section 2-1401 petition had been dismissed by the circuit court within 7 days after its filing and before the expiration of the 30-day period for the State to answer or otherwise plead. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at

805. The supreme court found the *sua sponte* dismissal improper because the section 2-1401 petition was not ripe for adjudication, as the State was not given time to answer or otherwise plead. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805.

¶ 11 This case involves a *mandamus* complaint that was filed on November 14, 2011. On January 3, 2012, the trial court held it "reviewed the pleadings" and found "them to be frivolous." The court dismissed defendant's complaint. The record does not show defendants were served with notice or a summons.

¶ 12 We find the principles of *Powell* and *Laugharn* control and the trial court's decision must be vacated. Here, the case is not ripe for adjudication. Defendants have not been served or issued summons and there has been no finding Edens had been given a reasonable time to so notify defendants. While six weeks have passed between the filing of the *mandamus* petition and the *sua sponte* dismissal, our supreme court has found lengthier delays not unreasonable. See *Segal v. Sacco*, 136 Ill. 2d 282, 288-89, 555 N.E.2d 719, 721-22 (1990) (19 weeks). We further note the trial court decided Edens' claims on the merits and did not dismiss the complaint for want of prosecution under Illinois Supreme Court Rule 103(b) (eff. July 1, 2007).

¶ 13 As we held in *Powell*, if a plaintiff wants his claims heard, he must serve the defendant or defendants. If he does not pursue his case, the trial court may dismiss it for want of prosecution after a reasonable time. See *Powell*, 2012 IL App (4th) 110168, ¶ 14, 2012 WL 3985891 at \*3 .

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, we vacate the trial court's judgment and remand for further proceedings.

¶ 16 Judgment vacated; cause remanded for further proceedings.