

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) 120053-U

Filed 9/27/12

NO. 4-12-0053

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DARNELL M. SMITH,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
NEIL WILLIAMSON, Sangamon County Sheriff,)	No. 11MR705
SERGEANT G. CLEMONS, SERGEANT GUY)	
BOUVET, LIEUTENANT CAIN, LIEUTENANT)	
POWELL, LIEUTENANT SMITH, SUPERIN-)	
TENDANT TERRY DURR, ASSISTANT SUPER-)	
INTENDANT WILLIAM STRAYER, C/O JOEL)	
BLUHM, SERGEANT BRIAN CAREY, C/O)	
MARTY CURRY, and BRENDA JAMES, Librarian,)	
Employees of the Sheriff's Office; and KAREN)	
THARP and JAMES GROHNE, Sangamon County)	
Assistant State's Attorneys, All Personally and in)	Honorable
Their Official Capacities,)	John Schmidt,
Defendants-Appellees.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Because the *pro se* complaint for damages, which had not been served on the defendants, was not ripe for adjudication, the trial court erred by dismissing it *sua sponte* based on its conclusion the claims were frivolous.

¶ 2 Plaintiff, Darnell M. Smith, appeals the trial court's *sua sponte* dismissal of his *pro se* complaint, which seeks damages from defendants. Smith alleges his constitutional rights were violated when employees of the Sangamon County sheriff retaliated against him for his litigation activity by placing him in segregation and refusing him access to certain legal materi-

als. Seven days after the complaint's filing, the trial court found the matter frivolous and dismissed Smith's case *sua sponte*. Smith appeals. We vacate the dismissal and remand for further proceedings.

¶ 3

I. BACKGROUND

¶ 4 On December 27, 2011, Smith filed a *pro se* complaint seeking damages from 14 defendants: Sangamon County Sheriff Neil Williamson, various individuals identified as employees of the sheriff, and 2 assistant State's Attorneys. Smith contends defendants violated his rights under the eighth and first amendments of the federal constitution (U.S. Const., amends, VIII, I), as well as his right to access legal materials under the administrative code (20 Ill. Adm. Code 430.40 (2012)).

¶ 5 According to the allegations in the complaint, Assistant State's Attorney Karen Tharp, the defendant in one of Smith's civil lawsuits and a defendant in this case, contacted Brenda James, a law librarian and a defendant in this case, and informed her of Smith's legal action against Tharp. After Tharp did so, James refused Smith's requests for certain case law. Smith filed a grievance.

¶ 6 Attached to the complaint are committee decisions on two grievances that followed James' refusal to provide Smith certain cases. These decisions reveal the following facts: on August 16, 2010, a committee of three individuals (defendants in this case) heard Smith's grievance. The committee determined "the Law Librarian only has to furnish [Smith] with case law that pertains to the case or cases that [he is] in custody on." Despite this determination, Smith continued making requests for case law. On September 10, 2010, he was issued a ticket for such requests. Smith filed a grievance with regard to the ticket, and a hearing was held

on September 15, 2010. Another committee, comprised of three defendants in this case, heard the grievance and concluded Smith had been informed he could only request cases "pertaining to his case/cases." The committee found, due to his failure to abide by this directive, his ticket would stand and he would receive 10 days in disciplinary segregation followed by a reclassification.

¶ 7 In his complaint, Smith further contended these actions were intentional and they obstructed and interfered with his litigation. Smith alleged he was placed in segregation for the sole purpose of removing his legal documents.

¶ 8 On January 3, 2012, the trial court dismissed Smith's complaint, finding the claims frivolous. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, Smith essentially argues the trial court erred by finding his claim frivolous. Smith restates the same allegations made in his complaint. Smith adds the allegation the trial judge in this case, Judge John Schmidt, had an impermissible conflict of interest. Smith alleges the judge served as the Sangamon County State's Attorney in his criminal trial and is a named defendant in a lawsuit Smith filed in the federal court (*Smith v. Maddoxs*, No. 20:10-cv-03274 (C.D. Ill.) (Additional defendants Katee Mauer, Dave Hannah, George F. Seaver, John Schmidt, Karen Thorpe, John Bell)).

¶ 11 Recently, this court vacated a *sua sponte* dismissal of a *pro se* petition for injunctive relief and damages on concluding the trial court acted prematurely. *Powell v. Lewellyn*, 2012 IL App (4th) 110168, ¶¶ 11-12, 2012 WL 3985891, *2. In *Powell*, only 13 days separated the filing of the petition and the court's *sua sponte* dismissal, and the record did not

show the defendants had been served with notice or a summons. *Powell*, 2012 Ill. App. (4th) 110168, ¶ 10, 2012 WL 3985891 at *2. This court concluded the case was not ripe for adjudication because the petitioner was not given a reasonable time to obtain service on the defendants and the defendants had not been provided the opportunity to respond. *Powell*, 2012 Ill. App. (4th) 110168, ¶¶ 11-12, 2012 WL 3985891 at *2.

¶ 12 In *Powell*, this court relied upon the decision in *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009), in which our supreme court vacated a *sua sponte* order that dismissed a *pro se* prisoner's petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2004)). *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. Seven days separated the section 2-1401 petition and its dismissal, and the usual 30-day period for the defendant to answer or otherwise plead had not expired. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. Because the State had not been afforded time to respond, the court found the *sua sponte* dismissal was not ripe for adjudication and improper. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805.

¶ 13 Smith's complaint for damages was filed on December 27, 2011. On January 3, 2012, the trial court found Smith's claims frivolous and dismissed the complaint. The record does not establish defendants were served with notice or a summons.

¶ 14 The principles of *Powell* and *Langharn* control. The trial court's decision must be vacated, because the case is not ripe for adjudication. Defendants have not been served or issued summons. Consistent with our holding in *Powell*, if Smith wants his claims heard, he must serve defendants. See *Powell*, 2012 Ill. App. (4th) 110168, ¶ 14, 2012 WL 3985891 at *2. If he does not pursue his case, the trial court may dismiss it for want of prosecution after a reasonable time.

See *Powell*, 2012 Ill. App. (4th) 110168, ¶ 14, 2012 WL 3985891, *3.

¶ 15

III. CONCLUSION

¶ 16

We vacate the trial court's judgment and remand for further proceedings.

¶ 17

Vacated; cause remanded for further proceedings.