

(SOP). Ott was the warden at the time alleged in Collins's petition, Godinez was the director of the IDOC, Kalicak was a therapist in the SOP, and Alyssa Williams-Schafer was the coordinator of the SOP.

¶ 5 Participants of the program are housed in a separate facility from the general population of the prison. As part of the SOP, the participants are required to follow a set of rules specifically for the SOP. When a participant breaks a rule, he may be required to hold himself "accountable" to his peers. Such "accountability" may include apologizing to his peers for his actions, taking responsibility for his actions, or doing homework assignments assigned by his fellow participants. If a participant does not agree with the accountability decision, he may appeal to a prisoners appeal committee. The committee will then either keep the recommended accountability in place or recommend another remedy. IDOC staff have the authority to approve or disapprove the recommendation by the committee.

¶ 6 In Collins's petition, he alleged that the SOP did not abide by the same rules as the rest of Graham and that as a result, his equal protection rights were violated because he was not treated in the same manner as those similarly situated. He further alleged that his first and fourteenth amendment rights, and his rights under the Illinois Constitution, were violated "because petitioner is not allowed to express, voice his thoughts verbally, or on paper he would be held 'accountable' and disciplined by other offenders. And held 'accountable' for keeping secrets, remaining silent, or not snitching on others will have petitioner disciplined and punished by assigned homework." He also alleged that being held "accountable" by his peers violated his fifth amendment right against self-incrimination.

¶ 7 Specifically, Collins was held "accountable" for (1) refusing to give his laundry to the laundry porter for cleaning, (2) calling his cellmate a "punk," (3) horseplay with his cellmate, (4) leaving a meeting to turn off a television per the instructions of a corrections officer, and (5) leaving his drinking cup in the day room. Collins asked the circuit court to

order the SOP to abide by the rules of Graham and to discontinue making rules for the SOP. He argues that the SOP's accountability system gives other inmates authority over him, in contravention of the Graham orientation manual.

¶ 8 On November 14, 2011, defendants Ott, Kalicak, and Williams-Schafer moved to dismiss Collins's petition pursuant to section 2-615 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2010)), arguing that Collins failed to state a cause of action. On November 21, 2011, defendant Godinez moved to join their motion to dismiss, which, discussed further below, the circuit court never ruled on. Collins filed a response to the motion to dismiss on December 9, 2011. On December 23, 2011, the defendants filed a response to Collins's response. On January 24, 2012, the circuit court granted the defendants' motion to dismiss. This appeal followed.

¶ 9

ANALYSIS

¶ 10 Initially, we must consider whether the circuit court's order granting the motion to dismiss was rendered non-final by the presence of an unserved defendant or by the court's failure to rule on Godinez's motion to join the action to dismiss. In his *mandamus* petition, Collins listed the IDOC, Andrew Ott, S.A. Godinez, Sherry Kalicak, and Alyssa Williams-Schafer as defendants. He did not serve the IDOC. Defendants Ott, Kalicak, and Williams-Schafer filed a motion to dismiss. Defendant Godinez filed a motion to join the other defendants' motion to dismiss. The circuit court did not rule on that motion. It granted the other defendants' motion to dismiss. The circuit court's order also applies to Godinez, even though it never ruled on his motion to join the motion to dismiss. "A court may grant a motion to dismiss even as to nonmoving defendants where the nonmoving defendants are in a position similar to that of moving defendants or where the claims against all defendants are integrally related." *Bonny v. Society of Lloyd's*, 3 F.3d 156, 162 (7th Cir. 1993). Here, the claim is universal to all of the defendants. We find that the order granting the motion

to dismiss also dismissed the action against the IDOC and Godinez.

¶ 11 We review *de novo* the order granting a motion to dismiss a *mandamus* petition, specifically, a motion to dismiss filed pursuant to section 2-615 or 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2010)). *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998 (2004). In this case, we review the motion to dismiss as a combined motion pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2010)). We do so because, in addition to arguing that Collins's complaint failed to state a cause of action, the defendants presented an affirmative matter, that the plaintiff voluntarily entered the program and signed a document to indicate as much, that would defeat one of the plaintiff's claims pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2010)). A motion that is incorrectly designated will be deemed proper if the respondent has not been prejudiced. *Kovilic v. City of Chicago*, 351 Ill. App. 3d 139, 143 (2004). While the defendants failed to label their motion to dismiss as a motion to dismiss pursuant to section 2-619.1 of the Code, we find that this failure did not prejudice Collins.

¶ 12 A section 2-615 motion to dismiss admits all the well-pleaded facts and attacks the legal sufficiency of the complaint. *Ford v. Walker*, 377 Ill. App. 3d 1120, 1124 (2007). Pursuant to that section, "[d]ismissal is appropriate only where, viewing the allegations in the light most favorable to the plaintiff, it is clear that no set of facts can be proved under the pleadings that will entitle the plaintiff to relief." *Gilchrist v. Snyder*, 351 Ill. App. 3d 639, 642 (2004). In ruling on a section 2-615 motion, the court may take into consideration documents and exhibits that have been incorporated into the pleadings. A section 2-619 motion to dismiss "admits the legal sufficiency of the complaint and raises defects, defenses or other affirmative matter which appears on the face of the complaint" and acts to defeat the plaintiff's claim. *Nepl v. Murphy*, 316 Ill. App. 3d 581, 584 (2000).

¶ 13 *Mandamus* is an extraordinary remedy used to enforce the performance of official

duties by a public officer where no exercise of discretion exists. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999). The purpose of *mandamus* is not to substitute the court's discretion and judgment for the discretion of the official. *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739 (2001). *Mandamus* relief will not be granted unless the petitioner can demonstrate a clear, affirmative right to relief, a clear duty of the official to act, and a clear authority in the official to comply with the writ. *Id.* *Mandamus* relief will be granted only if the petitioner sets forth every material fact needed to demonstrate that he has satisfied the elements of a *mandamus* action. *Turner-El v. West*, 349 Ill. App. 3d 475, 480 (2004). *Mandamus* is not a means to reverse an official's discretionary acts. *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1131 (2004). A writ of *mandamus* is issued to compel an official to perform a ministerial, nondiscretionary duty. *Doe v. Carlson*, 250 Ill. App. 3d 570, 573 (1993).

¶ 14 In his petition, Collins argued that his constitutional rights were violated by the rules in the SOP because the rules in the SOP violate the orientation manual of Graham, namely one section of the manual which contains the following: "no offender or group of offenders is permitted to have control or authority over another." Collins also argued that the program's rules violated his rights to freedom of speech, freedom of religion, and freedom to petition under the first amendment; his rights to due process and equal protection under the fourteenth amendment; his right against self-incrimination; and article I, sections 2 through 5, of the Illinois Constitution.

¶ 15 Collins argued that his fifth amendment rights were violated by the rules in the SOP because he was held "accountable" for infractions. We find *McKune v. Lile*, 536 U.S. 24 (2002), dispositive of this issue. In *McKune*, the petitioner was an inmate who participated in a sexual offender program. *Id.* at 29-31. He argued that the rules of the program forced him to incriminate himself and that he was punished if he did not participate in disclosing potentially incriminating information while participating in the program. *Id.* The Supreme

Court found that the petitioner was able to leave the program at any time and with limited repercussions. *Id.* at 43, 45. The Supreme Court went on to note that the punishment the inmate faced was not so severe to implicate the fifth amendment. *Id.* The same holds true in this case. Collins was able to leave the program, as it was voluntary. He was not compelled to remain in the program. The defendants attached a mental health form that indicated Collins had signed up to participate in the SOP but was not forced to do so. His leaving the program would not result in repercussions as large as those in *McKune*, and the inmate in *McKune* failed to show an adequate fifth amendment violation. Thus, Collins's fifth amendment rights were not violated.

¶ 16 Collins also argued that the rules in the SOP violated his first amendment rights, his fourteenth amendment rights, and his rights under the Illinois Constitution. Illinois is a fact-pleading state, which means a petitioner must plead facts in support of each required element of a legally recognized claim. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451 (2004). "A complaint is insufficient if it states mere conclusions of fact or law, and it must, at a minimum, allege facts sufficient to set forth the essential elements of a cause of action." *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 27. With the exception of his fifth amendment claim, Collins did not connect his factual allegations, listed above, with the elements of his other claims. Nor did he list the elements of his legal claims. As noted above, conclusory statements are not sufficient to state a cause of action. While we construe the pleadings in the light most favorable to the plaintiff, Collins's petition fails to show how his rights were violated and specifically which rights he believed were violated. See *Lucas*, 349 Ill. App. 3d at 998.

¶ 17 Furthermore, prison handbooks and manuals do not confer rights to the prisoners beyond those required by the United States Constitution, and Illinois law provides no more rights than those which are constitutionally required. *Ashley v. Snyder*, 316 Ill. App. 3d

1252, 1258 (2000). Thus, Collins cannot assert a right relating to the Graham orientation manual, as the manual does not confer any rights to him. The rules in the SOP do not give authority to inmates over their peers in the program. The final decision on accountability rested with the program therapist, defendant Kalicak. Thus, even if the orientation manual did confer a right to Collins, we find that no such right would have been violated.

¶ 18 Collins failed to state a cause of action. He failed to demonstrate that he had a clear, affirmative right to satisfy a valid claim for *mandamus* relief. Even if he was able to assert such a right, we find that his ability to exit the program whenever he wanted precludes him from asserting a successful *mandamus* complaint.

¶ 19 Lastly, Collins did not exhaust his administrative remedies before filing suit. We may affirm a dismissal on appeal for any reason available from the record. *Brandon v. Bonell*, 368 Ill. App. 3d 492, 507-08 (2006). A prisoner must exhaust his administrative remedies before filing suit, including the filing of a *mandamus* action. *Johnson v. Department of Corrections*, 368 Ill. App. 3d 147, 150 (2006). Collins should have first tried to resolve the conflict by discussing it with his counselor. 20 Ill. Adm. Code 504.810(a) (2010). If that failed, he should have filed a grievance and progressed through those channels. *Id.* He did not do so. Thus, his complaint was properly dismissed on these grounds alone.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Montgomery County is affirmed.

¶ 22 Affirmed.