

complaint, finding it frivolous and patently without merit. In November 2011, Thompson filed an amended *mandamus* complaint, which the court also *sua sponte* dismissed in April 2012.

¶ 3 On appeal, Thompson only asserts the trial court erred by dismissing his amended *mandamus* complaint. We vacate and remand.

¶ 4 I. BACKGROUND

¶ 5 According to Thompson's August 2011 *mandamus* complaint, he was serving a six-year prison term for burglary. On November 28, 2010, Thompson received a disciplinary ticket for transfer of funds (offense No. 306) and abuse of privileges (offense No. 310). On December 23, 2010, the adjustment committee held a hearing on the two aforementioned offenses. The final summary report for the December 23, 2010, hearing that was attached to Thompson's *mandamus* complaint was unsigned and the final result section was blank. The report stated Thompson admitted committing the offenses and listed recommended disciplinary actions of various types of punishments for a period of two months. The final disciplinary section stated "remanded." On December 28, 2010, the adjustment committee again held a hearing on the two offenses in the November 28, 2010, disciplinary ticket. The final summary report for the December 28, 2010, report listed recommended and final disciplinary actions of the same types of punishments as in the December 23, 2010, report but for a period of three months. The punishment included the revocation of good-time credit. The December 28, 2010, report is signed by defendants Clayton and Knisley and the final result stated guilty for both offenses. As with the December 23, 2010, report, the December 28, 2010, report stated Thompson admitted committing the offenses. On January 28, 2010, Thompson filed a grievance regarding the November 28, 2010, disciplinary report, which defendants Miller and Taylor denied in April

2011.

¶ 6 In August 2011, Thompson filed his *mandamus* complaint and asserted his due process rights were violated when his punishments were increased by a month at the December 28, 2010, hearing. Thompson alleged the increase in punishment also violated section 504.90(b)(1) of title 20 of the Illinois Administrative Code (20 Ill. Adm. Code 504.90(b)(1) (2003)). Moreover, Thompson argued he was not given any notice of the December 28, 2010, hearing, which he described as a rehearing. Thompson alleged the lack of notice violated his due process rights and section 504.90(d) of title 20 of the Illinois Administrative Code (20 Ill. Adm. Code 504.90(d) (2003)). Further, Thompson contended his January 2011 grievance was denied on a basis he did not raise in his grievance. Last, Thompson requested the December 28, 2010, disciplinary conviction be overturned.

¶ 7 The record on appeal lacks a summons for the August 2011 *mandamus* complaint and contains no evidence defendants in this case received service of Thompson's complaint.

¶ 8 On October 5, 2011, the trial court *sua sponte* dismissed Thompson's *mandamus* complaint, finding it was frivolous and without merit. On November 2, 2011, Thompson sought leave to file an amended *mandamus* complaint and filed the proposed amended *mandamus* complaint. In addition to the administrative code sections mentioned in the original complaint, the amended complaint also raised section 504.80(p)(2) of title 20 of the Illinois Administrative Code (20 Ill. Adm. Code 504.80(p)(2) (2003)), which prohibits an increase in the sanctions recommended by the adjustment committee. The amended complaint requested a *mandamus* order requiring defendants to follow their own rules and regulations, a declaratory judgment that defendants violated Thompson's rights, and \$3,000 in damages. Again, the record contains no

evidence defendants received service and a summons for the amended complaint. We note service on the Attorney General's office does not constitute service on the named defendants.

¶ 9 On March 26, 2012, Thompson filed a request for a hearing, asking the trial court to set a hearing on his amended *mandamus* complaint and some other documents Thompson filed on March 26, 2012, seeking to compel defendants to follow their own regulations. On April 13, 2012, the court found Thompson's amended *mandamus* complaint was also frivolous and without merit and dismissed it *sua sponte*.

¶ 10 On May 14, 2012, Thompson filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303(b) (eff. May 30, 2008). Thus, this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 11 **II. ANALYSIS**

¶ 12 While Thompson challenges the merits of the trial court's dismissal of his amended *mandamus* complaint, we first address whether this matter is even ripe for adjudication. The record does not show defendants were served notice or a summons for both the original *mandamus* complaint and the amended *mandamus* complaint.

¶ 13 Recently, in *Powell v. Lewellyn*, 2012 IL App (4th) 110168, ¶¶ 11-12, 976 N.E.2d 1106, 1108-09, this court 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, 976 N.E.2d at 1108. 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, 976 N.E.2d at 1108.

¶ 14 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 (Procedure Code) (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.

¶ 15 This appeal involves Thompson's amended *mandamus* complaint that was filed in November 2011. Section 14-102 of the Procedure Code (735 ILCS 5/14-102 (West 2010)) provides the following: "Upon the filing of a complaint for mandamus the clerk of the court shall issue a summons, in like form, as near as may be as summons in other civil cases. The summons shall be made returnable within a time designated by the plaintiff not less than 5 nor more than 30 days after the service of the summons." In this case, the clerk of the Sangamon County circuit court did not issue summons for either the original complaint or the amended complaint. In April 2012, the court dismissed Thompson's amended complaint based on its merits around five months after it was filed.

¶ 16 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 no finding has been made that Thompson had received reasonable time to so notify defendants. While five months had passed between the filing of the amended *mandamus* petition and the *sua sponte* dismissal, our supreme court has found similar 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 Thompson's 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).

¶ 17 As we held in *Powell*, if a plaintiff wants his claims heard, he must serve defendants. If Thompson 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, 976 N.E.2d at 1109.

¶ 18 **III. CONCLUSION**

¶ 19 For the reasons stated, we vacate the Sangamon County circuit court's judgment and remand for further proceedings.

¶ 20 Judgment vacated; cause remanded for further proceedings.

¶ 21 JUSTICE APPLETON, dissenting.

¶ 22 I respectfully dissent and would find, as plaintiff admitted the alleged prison disciplinary offenses, there is no merit to his claim for relief on appeal.

¶ 23 While I recognize the majority's preference for a complete record showing proof of service and a response from defendant, and in theory agree, there exists some cases like the instant complaint where no cause of action is sustainable on its face. In such a circumstance, it constitutes an undue and unnecessary burden on the resources of the State of Illinois to require a response before dismissing the matter on the merits.