

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) 120830-U

NO. 4-12-0830

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 26, 2013
Carla Bender
4th District Appellate
Court, IL

CRAIG RYNDERS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
ALEX L. DAWSON, Warden, Logan Correctional)	No. 12MR630
Center; and S.A. GODINEZ, Director, The Department)	
of Corrections,)	Honorable
Defendants-Appellees.)	John Schmidt,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in *sua sponte* dismissing plaintiff's *pro se* petition for writ of *certiorari* because the matter was not ripe for adjudication where defendants had not been served with the petition.

¶ 2 In July 2012, plaintiff, Craig Rynders, an inmate at the Logan Correctional Center, filed a *pro se* petition for writ of *certiorari* against defendants, Alex L. Dawson and S.A. Godinez, related to an Adjustment Committee finding defendant violated disciplinary rule No. 308 (possession of contraband). In August 2012, the trial court *sua sponte* dismissed the complaint as "frivolous and without merit." Plaintiff appeals. We vacate the court's dismissal and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On August 30, 2011, plaintiff was cited for violating disciplinary rule Nos. 203

(possession of drug and drug paraphernalia) and 308 (possession of contraband) for possessing a hand-rolled cigarette suspected to contain marijuana. Although the offender disciplinary report and Adjustment Committee summary report both stated the cigarette tested negative for marijuana, the Adjustment Committee found plaintiff guilty of both charges. Plaintiff filed a grievance to the Administrative Review Board. During the grievance process, disciplinary charge No. 203 (possession of drug and drug paraphernalia) was dismissed. However, the Administrative Review Board affirmed the Adjustment Committee's finding with regard to charge No. 308 (possession of contraband).

¶ 5 On July 11, 2012, plaintiff filed a *pro se* petition for "Writ of Certiori [*sic*]." In his petition, plaintiff alleged there was no evidence to support the Adjustment Committee's finding he committed disciplinary offense No. 308 (possession of contraband).

¶ 6 On August 8, 2012, the trial court *sua sponte* dismissed plaintiff's complaint as "frivolous and without merit," finding "[t]hese infractions included the possession of cannabis inside the institution."

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 In *Powell v. Lewellyn*, 2012 IL App (4th) 110168, ¶¶11-12, 976 N.E.2d 1106, this court recently vacated a *sua sponte* dismissal of a plaintiff's *pro se* petition for injunctive relief and damages finding the trial court acted prematurely. In *Powell*, just 13 days separated the plaintiff's filing of his petition and the court's *sua sponte* dismissal. Moreover, the record did not show the defendants had been served with a notice or summons. *Powell*, 2012 IL App (4th) 110168, ¶10, 976 N.E.2d 1106. We concluded the case was not yet ripe for adjudication where

the petitioner was not afforded a reasonable time to obtain service on the defendants prior to the court's dismissal. *Powell*, 2012 IL App (4th) 110168, ¶ 11, 976 N.E.2d 1106. We note, had the plaintiff effectuated service on the defendants, the defendants would not have been afforded a reasonable time to respond.

¶ 10 *Powell* relied upon the supreme court's decision in *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009), which vacated a *sua sponte* order dismissing a *pro se* prisoner's section 2-1401 petition (735 ILCS 5/2-1401) (West 2004)). *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. In *Laugharn*, the ordinary 30-day period for the defendant to answer or otherwise file a responsive pleading had not expired. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. In fact, just seven days separated the filing of the section 2-1401 petition and its dismissal. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. The *Laugharn* court found the trial court's *sua sponte* dismissal was not ripe for adjudication because the State had not been afforded time to respond. As a result, the court found the trial court's dismissal was improper. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805.

¶ 11 In this case, plaintiff filed his complaint on July 11, 2012. On August 8, 2012, the trial court *sua sponte* dismissed plaintiff's petition as "frivolous and without merit," finding "[t]hese infractions included the possession of cannabis inside the institution." However, our review of the record does not reveal defendants were ever served with a notice or a summons. Following the reasoning in *Powell* and *Laugharn*, the trial court's dismissal of plaintiff's complaint must be vacated because the case is not ripe for adjudication where defendants have not been served or issued a summons. If plaintiff wishes his claim to be heard, he must serve defendants. See *Powell*, 2012 IL App (4th) 110168, ¶ 14, 976 N.E.2d 1106. In the event

plaintiff does not pursue his case, the trial court may dismiss it after a reasonable period of time for want of prosecution. See *Powell*, 2012 IL App (4th) 110168, ¶14, 976 N.E.2d 1106.

¶ 12 Finally, we note, contrary to the trial court's docket entry, the documentation in plaintiff's petition discloses the hand-rolled cigarette tested negative for cannabis and the charge relating to possession of drugs was dismissed by the Administrative Review Board. Thus, the court's basis for finding defendant's claim frivolous and without merit was incorrect.

¶ 13 III. CONCLUSION

¶ 14 For the reasons stated, we vacate the trial court's dismissal order and remand for further proceedings consistent with this order.

¶ 15 Judgment vacated; cause remanded for further proceedings.