

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).

2014 IL App (4th) 130921-U

NO. 4-13-0921

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 17, 2014

Carla Bender

4th District Appellate

Court, IL

ROBERT SHOLES,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
THE DEPARTMENT OF)	No. 13CH184
CORRECTIONS,)	
Defendant-Appellee.)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted defendant's section 2-615 motion to dismiss as plaintiff presented no facts supporting his claim the Department of Corrections violated his constitutional rights.

¶ 2 In January 2013, plaintiff, Robert Sholes, filed a *pro se* complaint seeking injunctive relief against defendant, the Department of Corrections (DOC), alleging the Illinois truth-in-sentencing law (730 ILCS 5/3-6-3(a)(2) (West 2012)) violated his constitutional rights. In July 2013, the trial court granted DOC's motion to dismiss. Sholes appeals, arguing the trial court erred by not (1) providing a court reporter at the hearing on his complaint, and (2) conducting an evidentiary hearing regarding his claims. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Statute at Issue

¶ 5 Section 3-6-3(a)(2) of the Unified Code of Corrections, also known as the truth-in-sentencing law, limits the sentencing credit certain prisoners are eligible to receive. 730 ILCS 5/3-6-3(a)(2) (West 2012). The DOC applied the truth-in-sentencing law to Sholes, requiring him to serve at least 85% of his court-imposed sentence. See 730 ILCS 5/3-6-3(a)(2)(ii) (West 2012).

¶ 6 Truth in sentencing was first enacted in 1995, pursuant to Public Act 89-404 (Pub. Act 89-404, § 40 (eff. Aug. 20, 1995)). Before this act's passage, those convicted of certain crimes were eligible to earn one day of good-conduct credit for each day in prison. See 730 ILCS 5/3-6-3(a)(2) (West 1994). In *People v. Reedy*, 295 Ill. App. 3d 34, 36, 692 N.E.2d 376, 379 (1998), the Second District held Public Act 89-404 unconstitutional, in violation of the single-subject rule of the Illinois Constitution of 1970 (Ill. Const. 1970, art. IV, § 8(d)). The *Reedy* case was then appealed to the Illinois Supreme Court.

¶ 7 As the appeal was pending before the supreme court, the Illinois General Assembly reenacted the truth-in-sentencing provision in Public Act 90-592 (Pub. Act 90-592, § 5 (eff. June 19, 1998)) (deleting and recodifying the entire truth-in-sentencing provision originating from Public Act 89-404). In rendering its decision in *Reedy*, the supreme court affirmed the Second District but stated Public Act 90-592 validly reenacted the truth-in-sentencing law and applied to crimes committed after its effective date, June 19, 1998. *People v. Reedy*, 186 Ill. 2d 1, 17-18, 708 N.E.2d 1114, 1121-22, (1999).

¶ 8 B. Procedural History

¶ 9 In January 2013, Sholes filled a *pro se* complaint styled as a "Petition for Injunctive Relief." Sholes alleged DOC is improperly requiring him to serve 85% of his court-imposed 30-year sentence under Public Act 89-404 and the truth-in-sentencing law violates his

constitutional rights. In March 2013, the trial court denied Sholes' motion for appointment of counsel.

¶ 10 In May 2013, DOC moved under section 2-615 of the Code of Civil Procedure (Code) to dismiss the complaint as frivolous. 735 ILCS 5/2-615 (West 2012). DOC acknowledged Public Act 89-404 was declared unconstitutional in *Reedy*, but it argued the law was validly reenacted in Public Act 90-592, effective June 19, 1998, and Sholes had pleaded no facts suggesting he was not subject to the validly reenacted law. We note, our record indicates Sholes was convicted of predatory sexual assault in 2004, but the record does not indicate when Sholes committed this offense. DOC also argued Sholes did not state a claim for violation of his equal-protection rights, as he provided no specific facts supporting the claim. On May 28, 2013, Sholes responded to DOC's motion to dismiss and, on June 13, 2013, Sholes requested a hearing.

¶ 11 On June 24, 2013, the trial court set the matter for a hearing on July 11, 2013. On July 5, 2013, Sholes filed a motion requesting the court arrange a court reporter to be present at the hearing at the State's expense, as he was a poor person with limited resources. At the unrecorded telephone hearing with Sholes on July 11th, the court denied this motion. The docket entry states "[Sholes'] request for a [c]ourt reporter argued. No court reporter is available at this time. [Sholes] given option of hiring a reporter or to go forward with the hearing. [Sholes] advised he cannot hire a reporter." Following arguments, the court granted DOC's motion to dismiss.

¶ 12 On August 8, 2013, Sholes filed a "motion for rehearing," arguing he was denied an official court reporter at the State's expense. Sholes also argued "House Bill 3500 was passed by the 90th General Assembly in violation of the Constitution of the State of Illinois, Article IV, section 7(a)[,] as there was not reasonable public notice posted giving the date, time and place of

committee meetings." DOC filed a written response, arguing Sholes had no right to have his legal argument recorded and Sholes had forfeited his arguments regarding House Bill 3500 as they were not included in his complaint or previously presented to the court. On September 18, 2013, Sholes appeared over the telephone at a hearing on his motion for reconsideration. The corresponding docket entry indicates the court heard arguments and denied Sholes' motion for reconsideration. The court issued an order, stating, "the court hereby denies [Sholes'] motion for rehearing for the reasons stated in [DOC's] response." This appeal followed.

¶ 13

II. ANALYSIS

¶ 14

A. The Court Reporter

¶ 15 Sholes argues the trial court violated his due-process rights by failing to appoint a court reporter for the hearing. DOC argues Sholes was not entitled to a free court reporter and cannot show prejudice because he has not filed a bystander's report under Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). We agree with DOC.

¶ 16

Sholes was not entitled to a State-provided court reporter. Sholes argues he qualifies as an indigent person under section 5-105.5(a) of the Code (735 ILCS 5/5-105.5(a) (West 2012)). However, section 5-105.5(a) does not apply to Sholes. Section 5-105.5(b) provides Illinois courts shall waive fees when an indigent litigant is represented by a "civil legal services provider" (735 ILCS 5/5-105.5(b) (West 2012)). Sholes, who appeared *pro se*, was not represented by any such provider.

¶ 17

Further, Sholes could have filed a bystander's report with this court, incorporating into the record the content of the hearing he considered pertinent to our review, but he did not do so. See Ill. S. Ct. Rule 323(c) (eff. Dec. 13, 2005). The burden to produce a bystander's report is on the appellant, in this case Sholes. *In re Marriage of Gulla*, 234 Ill. 2d

414, 422, 917 N.E.2d 392, 397 (2009). Absent a complete record, this court presumes the trial court's order was supported by a sufficient factual basis and conforms to the law. *Id.* Sholes was not entitled to a State-provided court reporter and the trial court did not err in failing to provide one.

¶ 18 B. Sholes' Request for an Evidentiary Hearing

¶ 19 Sholes argues he was denied an evidentiary hearing on his allegations. DOC argues Sholes attended by telephone a hearing on DOC's motion to dismiss his claim and a hearing on his motion for reconsideration and Sholes failed to "clear the initial hurdle of stating a viable cause of action." We agree with DOC.

¶ 20 We first note, "all legislation is presumed to be constitutional and that the party challenging the legislation bears the heavy burden of establishing a clear constitutional violation." *People v. Ruiz*, 342 Ill. App. 3d 750, 762-63, 795 N.E.2d 912, 924 (2003). In determining the constitutionality of a statute, courts apply *de novo* review. *Id.* at 763, 795 N.E.2d at 924.

¶ 21 Sholes pleaded no facts demonstrating he is illegally serving 85% to 100% of his sentence. First, Sholes' argument Public Act 90-592 was ineffective to validly reenact the truth-in-sentencing law must fail under the supreme court's holding in *Reedy*. See *Reedy*, 186 Ill. 2d at 17, 708 N.E.2d at 1121 (holding "Public Act 90-592 recodified the truth-in-sentencing legislation in its entirety" and "truly served to cure the effect that the former act's invalidation had on the truth-in-sentencing law").

¶ 22 Second, Sholes pleaded no facts demonstrating he is serving 85% to 100% of his sentence pursuant to Public Act 89-404. Public Act 90-592 applies the truth-in-sentencing provisions in a prospective manner starting on its effective date, June 19, 1998, and therefore, it

did not apply to the plaintiffs in *Reedy*, who committed their offenses before that date. *Id.* at 17-18, 708 N.E.2d at 1121-22. To obtain relief under *Reedy*, Sholes must show his offenses were committed before June 19, 1998. See *Id.* Sholes, as the plaintiff, had the burden to allege the specific facts necessary to state his claim. See *Ruiz*, 342 Ill. App. 3d at 762-63, 795 N.E.2d at 924. As the trial-court number assigned to Sholes' case indicates charges were brought against him in 2004, Sholes was charged about six years after the truth-in-sentencing provision was validly reenacted. Sholes presented no evidence demonstrating his crim(es) took place before the truth-in-sentencing law was validly reenacted on June 19, 1998, and on appeal, Sholes does not allege his offense occurred before June 19, 1998. Consequently, Sholes' claims based on *Reedy* must fail. See *Reedy*, 186 Ill. 2d at 17-18, 708 N.E.2d at 1121-22.

¶ 23 Sholes did not meet his burden to plead specific facts demonstrating he was improperly sentenced under the truth-in-sentencing law. Thus, the trial court properly dismissed Sholes' claim.

¶ 24 III. CONCLUSION

¶ 25 For the forgoing reasons, we affirm the trial court's judgment.

¶ 26 Affirmed.