2015 IL App (2d) 130608-U
No. 2-13-0608
Order filed January 15, 2015



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

| | | |
|---|---|---|
| LAVERTIS STEWART, | ) | Appeal from the Circuit Court |
| | ) | of Winnebago County. |
| Plaintiff-Appellant, | ) | |
| | ) | |
| v. | ) | No. 12-MR-574 |
| | ) | |
| JOSEPH McGRAW, Chief Judge of Seventeenth Judicial Circuit, and BECKY WILLIAMS, Record Officer Supervisor of the Illinois Department of Corrections, | ) | Honorable |
| | ) | Gary V. Pumilia, |
| Defendants-Appellees. | ) | Judge, Presiding. |

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

**ORDER**

*Held:* The trial court properly dismissed defendant's complaint for *mandamus*. Therefore, we affirmed.

¶ 1 Following a jury trial, plaintiff, Lavertis Stewart, was convicted of murder, attempted murder, and armed robbery based on an incident that occurred in 1983. The trial court sentenced him to a term of 75 years' imprisonment for the murder conviction and a concurrent term of 30 years' imprisonment for the attempted murder conviction; plaintiff was not sentenced for the armed robbery conviction. Plaintiff filed a *pro se* complaint for *mandamus*, challenging

the three-year mandatory supervised release (MSR) term that attached to his sentence. Defendants, Judge Joseph McGraw[1] and Becky Williams, the Record Officer Supervisor of the Illinois Department of Corrections (IDOC), moved to dismiss plaintiff's *mandamus* complaint on the basis that it failed to state a cause of action. The trial court granted defendants' motion to dismiss. Plaintiff, *pro se*, appeals the dismissal of his *mandamus* complaint, arguing that: (1) automatically attaching the MSR term violated the separation of powers clause of the Illinois Constitution of 1970 (Ill. Const. 1970, art. II, §1); (2) the supreme court's decision in *People v. McChriston*, 2014 IL 115310, should not be followed; and (3) the three-year MSR term should run concurrently with his sentence. We affirm.

¶ 2 I. BACKGROUND

¶ 3 On August 10, 2012, plaintiff filed a complaint for *mandamus*. In his complaint, plaintiff argued that the trial court failed to comply with section 5-8-1(d) of the Unified Code of Corrections (Code) (Ill. Rev. Stat. 1983, ch. 38, ¶ 1005-8-1) by not imposing a three-year MSR term at the time of sentencing. Neither the sentencing order nor the transcript of the sentencing hearing mentioned the MSR term. Plaintiff argued that, as a result, the IDOC lacked authority to add the three-year MSR term to his sentence. Characterizing the MSR term as unconstitutional and void, plaintiff requested that the trial court either vacate the MSR term or order it to run concurrently with his prison term.

¶ 4 Defendants moved to dismiss plaintiff's *mandamus* complaint pursuant to sections 2-615, 2-619, and 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-615, 619, 619.1 (West 2012)).

[1] Judge McGraw, the current Chief Judge of the Seventeenth Judicial Circuit, was substituted for the former trial judge, Judge Smith, who retired. See 735 ILCS 5/2-1008(d) (West 2012).

Defendants argued that plaintiff failed to state a claim upon which *mandamus* relief could be granted and that plaintiff's claims against Judge McGraw were barred by the doctrine of judicial immunity. Defendants attached a memorandum of law in support of their motion to dismiss, arguing that: (1) a MSR term was mandatory and attached to a sentence by operation of law, regardless of whether the MSR term was expressly attached by the sentencing court; (2) the imposition of a sentence was a matter of judicial discretion; and, (3) plaintiff cited no authority for the proposition that defendants had the duty to act, the power to alter his sentence, or the power to comply with the terms of a writ of *mandamus*.

¶ 5 Plaintiff filed a reply to defendants' motion to dismiss. In his reply, plaintiff argued that his complaint for *mandamus* relief was proper because the IDOC failed to "follow" the trial court's sentencing order by "adding" the three-year MSR term to his sentence.

¶ 6 The trial court granted defendants' motion to dismiss, reasoning that the MSR term was a part of plaintiff's sentence by operation of law.

¶ 7 Plaintiff then filed a motion to vacate judgment and/or make findings of unconstitutionality. Plaintiff argued that because the trial court, rather than the IDOC, had a duty to impose an MSR term, *mandamus* relief was appropriate. Plaintiff further argued that either the IDOC "added" the MSR term, rendering it void, or, the MSR term attached by operation of law, which violated separation of powers principles.

¶ 8 The trial court denied plaintiff's motion to vacate judgment, and plaintiff timely appealed.

¶ 9 II. ANALYSIS

¶ 10 A section 2-615 motion to dismiss attacks the legal sufficiency of a complaint based upon defects apparent on the face of the complaint. *Ranjha v. BJBP Properties, Inc.*, 2013 IL App (1st)

122155, ¶ 9. A complaint is legally sufficient if it states a recognized claim upon which relief can be granted, whereas a complaint that fails to meet that standard should be dismissed because there is no recourse at law for the alleged injury. *Id*. In reviewing the sufficiency of a complaint, the allegations in the complaint must be construed in the light most favorable to the plaintiff, and a court must accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Heastie v. Roberts*, 226 Ill. 2d 515, 531 (2007). "A cause of action should not be dismissed under section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Id*. at 531. However, mere conclusions of law or facts that are not supported by specific factual allegations are insufficient to withstand a section 2-615 motion to dismiss. *Ranjha*, 2013 IL App (1st) 122155, ¶ 9. We review *de novo* the trial court's decision to grant a section 2-615 motion to dismiss. *Id*.

¶ 11 Plaintiff appeals the dismissal of his complaint for *mandamus*. *Mandamus* is an extraordinary remedy generally used to compel a public official to perform a ministerial duty. *IP Plaza, LLC v. Bean*, 2011 IL App (4th) 110244, ¶ 30. It is granted to enforce the performance of a public officer's official nondiscretionary duties as a matter of right. *Duane v. Hardy*, 2012 IL App (3d) 110845, ¶ 11. It is the plaintiff's burden to demonstrate a clear, legal right to the requested relief and set forth every material fact necessary to prove he is entitled to a writ of *mandamus*. *IP Plaza, LLC*, 2011 IL App (4th) 110244, ¶ 30. "For *mandamus* to issue, a plaintiff must establish material facts that demonstrate (1) his clear right to the requested relief, (2) a clear duty on the defendant to act, and (3) clear authority existing in the defendant to comply with an order granting *mandamus* relief. *Id*. We review *de novo* the trial court's decision to dismiss a complaint for *mandamus* relief." *Duane*, 2012 IL App (3d) 110845, ¶ 11.

¶ 12 Plaintiff first argues that the automatic attachment of the MSR term in his case, when it was not imposed by the trial court or written into the sentencing order, violates the separation of powers clause. Plaintiff's argument is easily rejected based on the supreme court's recent decision in *McChriston*.

¶ 13 In *McChriston*, the defendant was convicted of a Class 1 felony and sentenced to 25 years' imprisonment. *McChriston*, 2014 IL 115310, ¶ 1. Like the situation in the instant case, the trial court order did not indicate that the defendant would also be required to serve a MSR term pursuant to section 5-8-1(d) of the Code (730 ILCS 5/5-8-1(d) (West 2004)), nor did the trial court mention MSR during the sentencing hearing. *Id*. After the IDOC record reflected the three-year MSR term, the defendant argued that only the trial court, not the IDOC, was empowered to impose a term of MSR and that the addition of the MSR term violated the separation of powers clause of the Illinois Constitution. *Id*. ¶¶ 3, 6.

¶ 14 The *McChriston* court analyzed section 5-8-1(d) of the Code, which contained the same language as the version of the Code at the time plaintiff in this case was sentenced. *Id*. ¶ 9. The section stated that "[e]xcept where a term of natural life is imposed, every sentence shall include *as though written therein* a term in addition to the term of imprisonment." *Id*. (Emphasis added.) 730 ILCS 5/5-8-1(d) (West 2004); Ill. Rev. Stat. 1983, ch. 38, ¶ 1005-8-1.

¶ 15 The supreme court began by noting that it had previously held that it is within the General Assembly's authority to enact legislation that includes a mandatory parole term in a sentence by operation of law. *Id*. ¶ 13 (citing *People ex rel. Scott v. Israel*, 66 Ill. 2d 190 (1977)). It then looked to the statute's plain language, reasoning that section 5-8-1(d) provided that the sentence shall include a period of MSR as if it were written within the sentence. *Id*. ¶ 17. In other words, the sentencing order issued by the trial court in *McChriston* "included a

term of MSR even if the court did not mention the MSR term at the sentencing hearing or in the sentencing order." *Id*. ¶ 17. Because the MSR term was included automatically in the sentence, even if not specifically written in the sentencing order, the IDOC did not add onto the defendant's sentence by imposing the MSR term, and the defendant's separation of powers argument failed. *Id*. ¶ 16.

¶ 16 The same reasoning applies here. Despite the fact that the MSR term was not included in the sentencing order or mentioned during the sentencing hearing, the plain language of the statute at the time plaintiff was sentenced provided that the MSR term be automatically included as part of his sentence. See *id*. ¶ 23. Therefore, the IDOC did not *add* the MSR term to his sentence, and plaintiff's separation of powers argument cannot succeed.

¶ 17 In a related argument, plaintiff contends that when the written sentencing order conflicts with the oral pronouncement, the oral pronouncement controls. See *People v. Walker*, 386 Ill. App. 3d 1025, 1027 (2008) (when the oral pronouncement of a trial court conflicts with its written order, the oral pronouncement controls). However, as defendants point out, there are at least two problems with this argument. First, there is no conflict between the oral pronouncement and the written sentencing order, because neither contained a reference to the MSR term. Second, even if there was a conflict, MSR terms are statutorily required (*People v. Whitfield*, 217 Ill. 2d 177, 200 (2005)), meaning the trial court had no discretionary power not to impose the MSR term (see *McChriston*, 2014 IL 115310, ¶ 31).

¶ 18 Plaintiff concedes that *McChriston* is directly on point in this case. Nevertheless, he urges this court not to follow it on the basis that it is "unworkable and badly reasoned." According to plaintiff, the *McChriston* court incorrectly analyzed the legislative history of section 5-8-1(d). Plaintiff's argument ignores the well-established principle that we are bound to follow the

decisions of our supreme court and have no authority to overrule or to modify them. *Gatreaux v. DKW Enterprises, LLC,* 2011 IL App (1st) 103482, ¶ 23. Accordingly, we are bound to follow *McChriston*.

¶ 19 Moreover, there is no merit to plaintiff's argument regarding the legislative history of section 5-8-1(d). As the *McChriston* court correctly noted, section 5-8-1(d) was amended to state that "the parole or mandatory supervised release term shall be written as part of the sentencing order ***." See Pub. Act 97-531 (eff. Jan. 1, 2012) (amending 730 ILCS 5/5-8-1 (West 2010)). As a result, the legislature intended to change the law by removing the phrase "as though written therein" and enacting an amendment that explicitly requires the court to write the applicable MSR term into the order. *McChriston*, 2014 IL 115310, ¶¶ 19, 21. The *McChriston* court reasoned that if the amendment was not intended to change the prior rule, then the phrase "as though written therein" would serve no purpose in the statute and be superfluous, which violated rules of statutory construction. *Id*. ¶¶ 21-22.

¶ 20 Last, plaintiff argues that the *McChriston* court did not answer the question of whether the MSR term runs concurrently with his sentence, but it implies that it does. No language in *McChriston* supports defendant's argument, and *Owens v. Snyder*, 349 Ill. App. 3d 35 (2004), holds the opposite.

¶ 21 In *Owens*, the plaintiff filed a *pro se* complaint for *mandamus* against the IDOC, arguing that his MSR term should run concurrently with his prison terms. *Owens*, 349 Ill. App. 3d at 38. The *Owens* court noted that the plaintiff had not raised any legal argument or cited legal authority for this argument. According to the court, "That is because there is none. His claim is frivolous." *Id*. at 45. The court recognized that MSR terms are imposed by statute "in addition" to imprisonment and cannot be stricken by the courts. *Id*. Thus, the three-year MSR term that

attached to plaintiff's sentence in this case follows his sentence; it does not run concurrently with it.

¶ 22 III. CONCLUSION

¶ 23 Because plaintiff has not met his burden of demonstrating a clear, legal right to the requested relief, the trial court properly dismissed his complaint for *mandamus* relief. The judgment of the Winnebago County circuit court is affirmed.

¶ 24 Affirmed.