2015 IL App (4th) 140806-U

NO. 4-14-0806

FILED
May 6, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CORKY TERRY,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
THE STATE OF ILLINOIS and THE DEPARTMENT OF CORRECTIONS,	)	No. 12CH1457
Defendants-Appellees.	)	Honorable
	)	Leslie J. Graves,
	)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

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

¶ 2 In April 2004, plaintiff, Corky Terry, was sentenced to 35 years in prison for first degree murder to be served at 100% under the truth-in-sentencing law. (The record does not reflect the date of the offense.) In November 2012, plaintiff filed a *pro se* complaint seeking injunctive relief against defendants, the State of Illinois and the Department of Corrections (DOC), alleging Illinois' truth-in-sentencing law is unconstitutional under the single-subject rule, violated his due-process and equal-protection rights, the *ex post facto* clause, and violated the separation of powers. In August 2014, the trial court granted defendants' motion to dismiss (735 ILCS 5/2-615 (West 2012)), holding the complaint was frivolous and without merit. Plaintiff

appeals the dismissal of his complaint. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2012, plaintiff filled a *pro se* complaint styled as a "Petition for Injunctive Relief." Plaintiff alleged defendants were improperly requiring him to serve 100% of his court-imposed 35-year sentence under Public Act 89-404 (Pub. Act 89-404, § 40 (eff. Aug. 20, 1995)) and the truth-in-sentencing law violated his constitutional rights. Plaintiff also alleged Senate Bill 2621 (97th Ill. Gen. Assem., Senate Bill 2621, 2012 Sess.), now Public Act 97-697 (Pub. Act 97-697, § 5 (eff. June 22, 2012)), violated his equal-protection rights. In January 2013, the trial court denied plaintiff's motion for appointment of counsel.

¶ 5 In April 2013, defendants moved pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) to dismiss the complaint for failure to state a cause of action. 735 ILCS 5/2-615 (West 2012). Defendants acknowledged Public Act 89-404 was declared unconstitutional in *People v. Reedy*, 295 Ill. App. 3d 34, 36, 692 N.E.2d 376, 379 (1998), but argued the law was validly reenacted by Public Act 90-592 (Pub. Act. 90-592, § 5 (eff. June 19, 1998)), and plaintiff's sentence appeared related to crimes committed after that date. Defendants also argued plaintiff did not state any facts suggesting how the changes to the meritorious-sentencing provisions contained in Senate Bill 2621 violated his equal-protection rights.

¶ 6 On August 11, 2014, the trial court held an unrecorded telephone hearing with the parties, where it heard arguments on defendants' motion to dismiss and took the matter under advisement. On August 27, 2014, the court granted defendants' motion to dismiss, finding plaintiff's complaint was frivolous and without merit.

¶ 7 II. ANALYSIS

¶ 8 On appeal, plaintiff argues the truth-in-sentencing statute is unconstitutional because Public Act 90-592 was not validly enacted, violates equal protection, and, therefore, defendants should not calculate his sentence credits pursuant thereto. Plaintiff also makes brief references to the single-subject clause, separation of powers, due process, and the *ex post facto* clause.

¶ 9 A motion to dismiss under section 2-615 of the Procedure Code challenges only the legal sufficiency of the complaint. *Pickel v. Springfield Stallions, Inc.*, 398 Ill. App. 3d 1063, 1066, 926 N.E.2d 877, 881 (2010). In ruling on a section 2-615 motion to dismiss, "the question is 'whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.' " *Green v. Rogers*, 234 Ill. 2d 478, 491, 917 N.E.2d 450, 458-59 (2009) (quoting *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004)). The trial court should not grant the motion to dismiss "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161, 920 N.E.2d 220, 223 (2009). We review a dismissal pursuant to section 2-615 *de novo*. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18.

¶ 10 "The constitutionality of a statute is a question of law, which we review *de novo*." *People v. Bell*, 327 Ill. App. 3d 238, 242, 764 N.E.2d 551, 554 (2002). Further, "[i]t is well established that 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).

¶ 11 Prior to August 20, 1995, persons convicted of certain crimes were eligible to

receive one day of good-conduct credit for each day served in prison. *People v. Reedy*, 186 Ill. 2d 1, 4, 708 N.E.2d 1114, 1115 (1999) (citing section 3-6-3(a)(2) of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/3-6-3(a)(2) (West 1994))). Public Act 89-404 contained a "truth[-]in[-]sentencing" provision which made defendants eligible to receive no more than 4 1/2 days of good-conduct credit for each month served. Pub. Act 89-404, § 40 (eff. Aug. 20, 1995). The supreme court, in *Reedy*, held Public Act 89-404 violated the single-subject rule and was unconstitutional. *Reedy*, 186 Ill. 2d at 18, 708 N.E.2d at 1122.

¶ 12 Public Act 90-592, effective June 19, 1998, both deleted and recodified the entire truth-in-sentencing legislation originating from Public Act 89-404. *Reedy*, 186 Ill. 2d at 17, 708 N.E.2d at 1121. Public Act 90-592 amended section 3-6-3(a)(2) of the Corrections Code to provide as follows:

> "The rules and regulations on early release shall provide, with respect to offenses committed on or after the effective date of this amendatory Act of 1998, the following:
>
> (i) that a prisoner who is serving a term of imprisonment for first degree murder shall receive no good conduct credit and shall serve the entire sentence imposed by the court[.]" Pub. Act 90-592, § 5 (eff. June 19, 1998) (amending 730 ILCS 5/3-6-3(a)(2) (West 2004)).

¶ 13 Plaintiff first argues Public Act 89-404 does not apply because the supreme court in *Reedy* declared it violated the single-subject rule. Plaintiff is correct, but the real question in

this case is the effect of Public Act 90-592, the no-credit legislation, has on his sentence credit. Plaintiff argues Public Act 90-592 is unconstitutional and violates due process and separation of powers because it was enacted before the Illinois Supreme Court was allowed the opportunity to perform its judicial duties of determining whether Public Act 89-404 violated the single-subject rule. Citing *Johnson v. Edgar*, 176 Ill. 2d 499, 522-23, 680 N.E.2d 1372, 1383 (1997), plaintiff also maintains, although the legislature has the power to enact curative legislation, "[c]urative legislation cannot validate or legalize the unconstitutional legislation itself." In *Reedy*, the supreme court considered whether another piece of legislation, Public Act 89-462, cured or validated Public Act 89-404, concluding that it did not:

> "In the case at bar, however, Public Act 89-462 does not recodify the language of the truth-in-sentencing provisions of Public Act 89-404. It only inserts an additional offense to be included in the truth-in-sentencing provision. Moreover, it is entirely devoid of curative language that would validate any actions taken in reliance upon Public Act 89-404. We conclude, therefore, that Public Act 89-462 did not serve as curative legislation for any portion of Public Act 89-404." *Reedy*, 186 Ill. 2d at 15, 708 N.E. 2d at 1120.

¶ 14 However, when legislation violates the single-subject rule, the only constitutional defect is the aggregation of unrelated subjects into a larger bill—there is no constitutional defect in the individual components of the larger bill. The legislature can constitutionally reenact smaller portions of the larger bill, so long as the new bill complies with the single-subject rule. In fact, the supreme court in *Reedy* specifically upheld the constitutionality of Public Act 90-592,

which the General Assembly had passed during the pendency of the appeals in that case. "[W]e note that, unlike all preceding amendments to Public Act 89-404, Public Act 90-592 truly served to cure the effect that the former act's invalidation had on the truth-in-sentencing law." *Reedy*, 186 Ill. 2d at 17, 708 N.E.2d at 1121. Therefore, plaintiff's argument Public Act 90-592 was ineffective to validly enact the truth-in-sentencing law must fail.

¶ 15 To obtain relief under *Reedy*, plaintiff must show his offense was committed before June 19, 1998, the effective date of Public Act 90-592. See *Reedy*, 186 Ill. 2d at 17-18, 708 N.E.2d at 1121-22. The record does not indicate when plaintiff committed his offense. Plaintiff has the burden of alleging specific facts necessary to state a claim the truth-in-sentencing provision is unconstitutional as applied to him. See *Ruiz*, 342 Ill. App. 3d at 762-63, 795 N.E.2d at 924. Plaintiff alleged no facts suggesting he committed his crime before the truth-in-sentencing law was validly enacted on June 19, 1998. According to the DOC webpage, plaintiff was charged in case No. 02CR2264901, suggesting the first degree murder charge was brought in 2002. See http://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx (last visited April 13, 2015). As plaintiff has not shown his offense occurred before June 19, 1998, the trial court did not err in finding this portion of his complaint meritless.

¶ 16 Plaintiff also asserts the truth-in-sentencing law violates due process, the *ex post facto* clause, and the principle of separation of powers. Plaintiff provides no facts or argument to support these positions, and even if he had, his arguments would fail.

¶ 17 Both the United States Constitution and the Illinois Constitution prohibit the enactment of *ex post facto* laws. See U.S. Const., art. I, § 9; Ill. Const. 1970, art. I, § 16. A criminal law violates the prohibition against *ex post facto* laws if a legislative change that

" 'alters the definition of criminal conduct or increases the penalty by which a crime is punishable' " is retroactively applied to a defendant. *Hadley v. Montes*, 379 Ill. App. 3d 405, 409, 883 N.E.2d 703, 707 (2008) (quoting *California Department of Corrections v. Morales*, 514 U.S. 499, 506-07, n.3 (1995)). "To establish an *ex post facto* violation, a 'plaintiff must show the following: (1) a legislative change; (2) the change imposed a punishment; and (3) the punishment is greater than the punishment that existed at the time the crime was committed.' " *Id.* (quoting *Neville v. Walker*, 376 Ill. App. 3d 1115, 1118-19, 878 N.E.2d 831, 834 (2007)). Here, plaintiff has not alleged he committed first degree murder before the June 1998 effective date of the truth-in-sentencing law. His complaint does not show he has been subjected to a legislative change retroactively applied to him which increased the penalty for the crime he committed. Therefore, he failed to allege an *ex post facto* violation.

¶ 18 Further, the legislature has broad discretion to set penalties for defined offenses "subject to the constitutional requirement that a person's liberty cannot be deprived without due process of law." *People v. Gorgis*, 337 Ill. App. 3d 960, 975, 787 N.E.2d 329, 340 (2003). The legislature properly exercises this power when "the statute is reasonably designed to remedy evils that the legislature has determined to be a threat to the public health, safety, and general welfare." *Id.* at 975, 787 N.E.2d at 341. Truth-in-sentencing laws are constitutionally permissible because they are "reasonably designed to remedy the evil of [those convicted of the most serious offenses] not serving their complete sentences." *Id.* Plainitff was convicted of first degree murder, a serious crime, and the imposition of truth-in-sentencing legislation for such a serious offense is a constitutionally valid exercise of the legislature's police power.

¶ 19 Plaintiff also asserts Public Act 90-592 and Public Act 97-697 violate his equal-

protection rights. Plaintiff's complaint does not state a cause of action the truth-in-sentencing law, under either Public Act 90-592 or Public Act 97-697, violates his equal-protection rights. He simply states the truth-in-sentencing law violates his equal-protection rights but does not indicate how. "The equal[-]protection clause of the fourteenth amendment (U.S. Const., amend. XIV) requires equality between groups of people who are similarly situated and does not require equality or proportionality of penalties for dissimilar conduct." *Id.* at 975, 787 N.E.2d at 340. As the truth-in-sentencing law treats all those convicted of the same crime in the same way, it does not violate the equal-protection clause. *Id.* at 975, 787 N.E.2d at 341.

¶ 20 Here, as set forth above, the allegations of plaintiff's petition were not sufficient to establish a cause of action upon which relief could be granted. Plaintiff did not allege any facts demonstrating defendants violated his constitutional rights.

¶ 21 Therefore, the trial court did not err when it granted defendants' motion to dismiss.

¶ 22 III. CONCLUSION

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

¶ 24 Affirmed.