

NOTICE
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2016 IL App (5th) 150143-U

NO. 5-15-0143

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

RICHARD BILIK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Randolph County.
)	
v.)	No. 14-MR-100
)	
THE ILLINOIS DEPARTMENT OF CORRECTIONS)	
and SALVADOR GODINEZ,)	Honorable
)	Eugene E. Gross,
Defendants-Appellees.)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court. Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Where the plaintiff failed to establish a valid *mandamus* claim, the order of the circuit court is affirmed.

¶ 2 The plaintiff, Richard Bilik, inmate #K-60539 in the Illinois Department of Corrections (Department), appeals the dismissal of his *pro se mandamus* complaint filed pursuant to section 14-101 of the Code of Civil Procedure (735 ILCS 5/14-101 *et seq.* (West 2012)). The circuit court dismissed the plaintiff's complaint for failing to state a claim for which relief could be granted. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 In April of 2010, the plaintiff was arrested for aggravated arson in violation of section 20-1.1(a)(1) of the Criminal Code of 1961 (720 ILCS 5/20-1.1(a)(1) (West 2008)) and held in the Cook County jail. On October 2, 2012, he was convicted and sentenced pursuant to section 5-5-3(c)(8) of the Unified Code of Corrections (730 ILCS 5/5-5-3(c)(8) (West 2008)) as a Class X offender to 15 years of imprisonment, "day for day good time credit given; 3 YR MSR; Sent. to be served at 85%," and he was entitled to receive "credit for time actually served in custody for a total of 0981 days as of the date of this order." The Department calculated the plaintiff's projected release date, giving him credit for 981 days served, pursuant to section 3-6-3(a)(2.5) of the Unified Code of Corrections, which states, "a prisoner who is serving a sentence for aggravated arson *** shall receive no more than 4.5 days of sentence credit for each month of his *** sentence of imprisonment." 730 ILCS 5/3-6-3(a)(2.5) (West 2012). According to the Department, the plaintiff's projected release date was in October 2022. The plaintiff disagreed with the Department's calculation and filed a grievance. That grievance was denied. On November 10, 2014, the plaintiff sought leave to file a petition for *mandamus* arguing that he was entitled to day-for-day credit for his time in jail awaiting trial and sentencing, thereby entitling him to a total of 1962 days' credit toward his sentence. In support of this argument, the plaintiff cited the County Jail Good Behavior Allowance Act (County Jail Act) (730 ILCS 130/1 *et seq.* (West 2012)) and attached the typed October 2, 2012, order to his petition. On February 19, 2015, the State filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)),

alleging that the plaintiff had failed to state a claim for *mandamus* relief. On March 19, 2015, after the plaintiff's answer and motion for summary judgment, the trial court granted the Department's motion to dismiss. The plaintiff appeals this decision.

¶ 5

ANALYSIS

¶ 6 "The sole issue raised on appeal is whether the circuit court properly dismissed plaintiff[s] *mandamus* action pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)) for failure to show a clear right of recovery on the part of plaintiff[] and a clear duty on the part of the Attorney General. A cause of action should be dismissed under section 2-615 only where it is clearly apparent that the plaintiff can prove no set of facts which would entitle him or her to recover." *McFatridge v. Madigan*, 2013 IL 113676, ¶ 16.

¶ 7 *Mandamus* is an extraordinary remedy used to enforce the performance of official duties by a public officer where no exercise of discretion exists. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999). The purpose of *mandamus* is not to substitute the court's discretion and judgment for the discretion of the official. *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739 (2001). *Mandamus* relief will not be granted unless the petitioner can demonstrate a clear, affirmative right to relief, a clear duty of the official to act, and a clear authority in the official to comply with the writ. *Id.* *Mandamus* relief will be granted only if the plaintiff sets forth every material fact needed to demonstrate that he has satisfied the elements of a *mandamus* action. *Turner-El v. West*, 349 Ill. App. 3d 475, 480 (2004). *Mandamus* is not a means to reverse an official's discretionary acts. *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1131 (2004).

¶ 8 When reviewing a dismissal pursuant to section 2-615, we view the pleadings in the light most favorable to the nonmoving party. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998 (2004). "The standard of review on appeal from an order granting a section 2-615 motion to dismiss is *de novo*." *Weatherman v. Gary-Wheaton Bank of Fox Valley, N.A.*, 186 Ill. 2d 472, 491 (1999). We may affirm the decision of the circuit court on any basis found in the record, regardless of whether it was relied on the by the circuit court in rendering its decision. *People v. Gumila*, 2012 IL App (2d) 110761, ¶ 56.

¶ 9 There are two reasons the plaintiff's claim fails. First, the plaintiff mistakenly relies upon the County Jail Act. According to section 3 of the County Jail Act, "The good behavior of any person who commences a sentence of confinement in a county jail for a fixed term of imprisonment after January 1, 1987 shall entitle such person to a good behavior allowance ***." 730 ILCS 130/3 (West 2012). Our supreme court has held that "[t]he County Jail Good Behavior Allowance Act (730 ILCS 130/1 *et seq.* (West 2000)) governs the diminution of sentence of prisoners in county facilities." *People v. Lindsey*, 199 Ill. 2d 460, 479 (2002). The county jail statute applies to individuals who begin their *jail* sentences at local government's detention centers. The plaintiff was not sentenced to jail, however; he was sentenced to the Department. His sentence did not begin until he was received by the Department for his felony arson prison sentence (730 ILCS 5/5-4.5-100(a) (West 2012)). "A sentence of imprisonment shall commence on the date on which the offender is received by the Department or the institution at which the sentence is to be served." 730 ILCS 5/5-4.5-100(a) (West 2012).

¶ 10 The second reason the plaintiff's claim fails is that the sentence credit statute is specific as applicable to individuals who have been convicted for *aggravated arson*—that said person shall receive no more than 4.5 days of credit per month. 730 ILCS 5/3-6-3(a)(2.5) (West 2014). While the mittimus states two types of sentencing credit—"day for day good time credit" and "[s]ent. to be served at 85%," any sentence credit other than 4.5 days per month served would be violative of the statute, and the court would have exceeded its authority to allow day-for-day sentence credit to be given. As our supreme court recognized in *People v. White*, 2011 IL 109616, ¶ 20, " '[a] court does not have authority to impose a sentence that does not conform with statutory guidelines [citations] and a court exceeds its authority when it orders a lesser or greater sentence than that which the statute mandates [citation].' " *People v. Easley*, 2014 IL 115581, ¶ 23. Therefore, day-for-day credit cannot apply to the plaintiff's aggravated arson sentence.

¶ 11 As such, the plaintiff cannot establish a valid *mandamus* claim because he cannot show he has a clear, affirmative right to the relief he seeks.

¶ 12 **CONCLUSION**

¶ 13 For the foregoing reasons, the dismissal of the plaintiff's *mandamus* petition and the ruling of the circuit court of Randolph County are affirmed.

¶ 14 Affirmed.