

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) 130549-U

NO. 4-13-0549

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 2, 2014

Carla Bender

4th District Appellate

Court, IL

DESHAWN COCROFT,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
THE DEPARTMENT OF CORRECTIONS,)	No. 13CH185
Defendant-Appellee.)	
)	Honorable
)	John W. Belz,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Appleton and Justice Turner concurred in the judgment.

ORDER

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

¶ 2 In January 2013, plaintiff, Deshawn Cocroft, filed a *pro se* complaint seeking injunctive relief against defendant, the Illinois Department of Corrections (DOC), alleging the Illinois truth-in-sentencing law (730 ILCS 5/3-6-3(a)(2) (West 2012)) was unconstitutional under the single-subject rule and violated his equal-protection rights. In May 2013, the trial court granted DOC's motion to dismiss (735 ILCS 5/2-615 (West 2012)). Cocroft appeals, arguing (1) the trial court erred by not providing a court reporter at the hearing on his complaint, and (2) he is illegally serving 85% to 100% of his court-imposed 35-year sentence.

¶ 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 truth-in-sentencing law requires Cocroft, who was convicted of aggravated criminal sexual assault, to serve at least 85% of his court-imposed sentence. 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 as it was 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 In response, 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, Cocroft filed a *pro se* complaint styled as a "Petition for Injunctive Relief." Cocroft alleged DOC is improperly requiring him to serve 85% to 100% of his court-imposed 35-year sentence under Public Act 89-404 and the truth-in-sentencing law violates his constitutional rights. In February 2013, the trial court denied Cocroft's motion for appointment of counsel.

¶ 10 In April 2013, DOC moved under section 2-615 of the Code of Civil Procedure to dismiss the complaint for failing to state a claim. 735 ILCS 5/2-615 (West 2012). DOC acknowledged Public Act 89-404 was declared unconstitutional in *Reedy*, but argued the law was validly reenacted in Public Act 90-592, effective June 19, 1998, and Cocroft's sentence appeared related to crimes committed after that date. The State attached a copy of Cocroft's appeal (*People v. Cocroft*, No. 1-09-1962-U (June 17, 2011) (unpublished order under Supreme Court Rule 23)) to its motion, indicating Cocroft was found guilty of two counts of predatory criminal sexual assault committed on January 26, 2003. DOC also argued Cocroft did not state a claim for violation of his equal-protection rights, as he provided no specific facts supporting the claim.

¶ 11 On May 22, 2013, the trial court held an unrecorded telephone hearing with Cocroft, where it heard arguments on his motion and took the matter under advisement. On May 30, 2013, the court granted DOC's motion to dismiss. The court found

"the Illinois Supreme Court has held that the legislation validly cured the defect in the truth-in-sentencing legislation effective January 19, 1998, which was prior to the date of plaintiff's offense. [*Reedy*, 186 Ill. 2d at 17-18, 708 N.E.2d at 1121-22.] [Cocroft] has

failed to allege any facts suggesting that his equal[-]protection rights were violated."

Cocroft did not file a motion for rehearing. This appeal followed.

¶ 12

II. ANALYSIS

¶ 13

A. Recording of Cocroft's Hearing

¶ 14

Cocroft argues the trial court violated his due process rights by failing to appoint a court reporter for the hearing, preventing him from "having his argument on record for review by this Court." The State argues Cocroft forfeited this argument by not requesting a court reporter at the hearing 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 the State. The forfeiture rule, which requires a litigant to raise any objection at trial, applies to *pro se* litigants. *People v. McCarter*, 385 Ill. App. 3d 919, 938, 897 N.E.2d 265, 282 (2008). Cocroft forfeited this argument by not requesting that the trial court record the hearing. Further, Cocroft cannot show he was prejudiced by the lack of recording because he could have filed a bystander's report, incorporating into the record the content of the hearing he considered pertinent to our review. See Ill. S. Ct. Rule 323(c) (eff. Dec. 13, 2005).

¶ 15

B. Validity of the Truth-In-Sentencing Law as Applied to Cocroft

¶ 16

Cocroft argues DOC is violating his constitutional rights because he is illegally serving 85% to 100% of his court-imposed 35-year sentence and is being denied his "vested right" to good-conduct credit. We disagree. "It 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). In determining the constitutionality of a statute, courts apply *de novo* review. *Id.* at 763, 795 N.E.2d at 924.

¶ 17 Cocroft has not shown he is serving 85% to 100% of his sentence pursuant to Public Act 89-404. Cocroft's 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"). 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.

¶ 18 To obtain relief under *Reedy*, Cocroft must show his offenses were committed before June 19, 1998. See *id.* As the petitioner, Cocroft has the burden of alleging specific facts necessary to state a claim the truth-in-sentencing provision is unconstitutional. See *Ruiz*, 342 Ill. App. 3d at 762-63, 795 N.E.2d at 924. Cocroft did not present any evidence demonstrating his crimes took place before the truth-in-sentencing law was validly reenacted on June 19, 1998. A copy of Cocroft's appeal (*People v. Cocroft*, No. 1-09-1962-U (June 17, 2011) (unpublished order under Supreme Court Rule 23)), which the State attached to its motion to dismiss, indicated Cocroft committed his crimes on January 26, 2003. After a hearing, where Cocroft participated by telephone, the trial court found these offenses occurred after the truth-in-sentencing provision was validly reenacted. As Cocroft has not shown his offenses occurred before June 19, 1998, his claims based on *Reedy* fail. See *Reedy*, 186 Ill. 2d at 17-18, 708 N.E.2d at 1121-22.

¶ 19 Cocroft argues the trial court failed to consider his "vested right to receive one day of good conduct credit for each day of good conduct service in prison." In *Reedy*, the supreme court explained the truth-in-sentencing provision, as reenacted in Public Act 90-592, constitutionally applies to crimes committed after June 19, 1998. See *Reedy*, 186 Ill. 2d at 17-18, 708 N.E. 2d at 1121-22. Given Cocroft has not demonstrated his crimes occurred prior to June 19, 1998, he clearly does not possess any "vested right" to awarding of sentence or good conduct credit in accordance with the law in effect prior to the valid reenactment of the truth-in-sentencing provision.

¶ 20 Cocroft also asserts truth-in-sentencing violates due process and the principle of separation of powers. Cocroft provides no facts or argument to support these arguments, and even if he had, his arguments would fail. 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.2 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.* Cocroft was convicted of predatory criminal sexual assault of a child, 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.

¶ 21 Cocroft's complaint does not state a cause of action that the truth-in-sentencing law violates equal protection because it simply states the truth-in-sentencing law violates his

equal-protection right 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.

¶ 22 Cocroft did not present any facts demonstrating DOC violated his constitutional rights. Consequently, the trial court did not err in granting DOC's motion to dismiss.

¶ 23 III. CONCLUSION

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

¶ 25 Affirmed.