SECOND DIVISION
January 31, 2012

No. 1-10-2838



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 74 C 5038 |
| | ) | |
| EZRA UPSHAW, | ) | The Honorable |
| | ) | Neera Lall Walsh, |
| Defendant-Appellant. | ) | Judge Presiding. |

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Dismissal of defendant's *habeas corpus* and *mandamus* petition affirmed where defendant failed to state a claim for relief.

¶ 2 Defendant Ezra Upshaw appeals from an order of the circuit court of Cook County dismissing his *pro se* petition for a writ of *habeas corpus*, and, alternatively, for writ of *mandamus*. He contends that the matter must be reversed and remanded because the circuit court did not examine his petition under *mandamus*, and that he stated a cognizable claim for such a writ.

¶ 3 This court previously affirmed defendant's 1980 jury convictions for three first degree

murders and indeterminate sentence of 300 to 900 years' imprisonment. *People v. Upshaw*, 103 Ill. App. 3d 690 (1981). Defendant thereafter sought to be released on parole (2000, 2001, 2002, 2005, and 2008), and each time, the Illinois Prisoner Review Board (Board) denied his application finding that to grant it would deprecate the seriousness of the offenses and promote disrespect for the law. After the 2008 denial, the Board determined that it was not reasonable to expect parole to be granted prior to August 2011, and postponed defendant's next parole eligibility hearing until then.

¶ 4 On July 20, 2010, defendant filed the instant *pro se* petition for a writ of *habeas corpus*, and, alternatively, for a writ of *mandamus*. Defendant alleged that his sentence is illegal, and, in relevant part, that white defendants were released on parole after a shorter period of incarceration than black defendants. He alleged that he, and other black applicants, would have been released on parole, like similarly situated white applicants, if the relevant laws such as the equal protection clause had been enforced which prohibits selective enforcement of criminal laws based upon an unjustifiable standard such as race. He also alleged that the Sex Offender Registration Act (730 ILCS 150/1 *et seq.* (West 2010)) should not apply to his case since he was not convicted of a sex related offense.

¶ 5 On August 23, 2010, the State informed the court that defendant filed a *habeas corpus* petition, or in the alternative, a writ of *mandamus*, and alleged that he was being illegally detained. The State maintained that there was nothing in defendant's petition showing that his sentence is illegal and would allow his immediate release; and, further, that he did not allege anything in his petition which would qualify for *mandamus* relief. The State noted that defendant may have a claim regarding whether he is required to register as a sex offender upon release or with the child killer registry, but that did not constitute a claim under the Habeas Corpus Act

(735 ILCS 5/10-101 (West 2010)). The court denied the petition, noting that defendant may have a claim as to whether he should be required to register as a sex offender, but found that point moot unless he is released on or up for parole. The court further noted that defendant was lawfully in custody pursuant to his sentence, and thus was not entitled to *habeas corpus* relief.

¶ 6 On appeal, defendant seeks reversal of that order claiming that the circuit court neglected to examine his petition under *mandamus* law, and that he stated a legitimate claim for such relief. We disagree.

¶ 7 As noted, defendant filed a motion entitled "petition for write of *habeas corpus* and, alternatively, for writ of *mandamus*," which was denied by the court. Defendant raises no argument with respect to his *habeas corpus* claim, but maintains that the court ignored his *mandamus* claim in reaching its decision. As the State points out, it is the court's judgment, and not its rationale, that is under review (*People v. Reed*, 361 Ill. App. 3d 995, 1000 (2005)); and we may sustain that judgment on any grounds supported by the record (*Leonardi v. Loyola University of Chicago*, 168 Ill.2d 83, 97 (1995)).

¶ 8 That said, we observe that *mandamus* is an extraordinary remedy appropriate to enforce the performance of official nondiscretionary duties of a public officer. *People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73, 76 (2009). *Mandamus* relief lies only where the movant shows that there was a clear right to relief, a clear public duty to take action, and clear authority for the officer to comply with the order. *People ex rel. Madigan v. Kinzer*, 232 Ill. 2d 179, 183 (2009). Absent an abuse of discretion, we will not disturb the trial court's decision regarding the propriety of a writ of *mandamus*. *Crump v. Illinois Prisoner Review Board*, 181 Ill. App. 3d 58, 60 (1989).

¶ 9 Defendant contends that *mandamus* proceedings may appropriately remedy constitutional violations of parole procedures, citing *Graham v. Klincar*, 163 Ill. App. 3d 1091 (1987). He

maintains that denials of paroles based on the determination that the defendant's release would deprecate the seriousness of his offense or promote disrespect for the law occurs more often in the case of black parole applicants than similarly situated white applicants. He claims that a complaint alleging such discrimination is a constitutional issue which should not be dismissed, citing to federal cases.

¶ 10 In *Graham*, the movant, who was denied parole, alleged that a newly enacted requirement that the Board conduct an *en banc* parole hearing before it could grant parole was unconstitutional. *Graham*, 163 Ill. App. 3d at 1092. The Third District disagreed, holding that the Board did not violate the movant's constitutional rights, then concluded that the movant failed to state a claim for *habeas corpus* or *mandamus* relief. *Graham*, 163 Ill. App. 3d at 1092-93. However, in distinguishing the two forms of relief, the reviewing court noted that "*mandamus* compels public officials to exercise their vested discretion," and that "such proceedings may appropriately remedy constitutional violations of parole procedures." *Graham*, 163 Ill. App. 3d at 1092. Defendant relies on this statement by the Third District in support of his request for *mandamus* relief.

¶ 11 In *Crump*, 181 Ill. App. 3d at 62-63, this court reviewed that statement relied upon, and noted that it was merely *dicta*, and that the Third District had determined that defendant did not establish his entitlement to *mandamus* relief. This court also observed that the Board's decision to deny parole to an applicant is a discretionary decision which is not normally a proper subject for *mandamus* relief, and that *mandamus* cannot be used to direct an inferior tribunal such as the Board, to reach a particular decision or to exercise its discretion in a particular manner. *Crump*, 181 Ill. App. 3d at 61-62. The court further observed that, in certain cases, allegations of constitutional violations can state a cause of action for *mandamus* relief, but that an allegation

that the Board unlawfully and unconstitutionally denied parole does not. *Crump*, 181 Ill. App. 3d at 62-63.

¶ 12 Since *Crump*, the supreme court has noted that Illinois inmates who are denied parole may seek several remedies, including a writ of *mandamus*; but, consistent with the reasoning in *Crump*, has determined that in the parole context, a writ of *mandamus* may only be used to compel the Board to exercise its discretion, such as providing a parole-eligible inmate with a parole hearing, but it may not be used to compel it to exercise that discretion in a certain manner. *Hanrahan v. Williams*, 174 Ill. 2d 268, 272 (1996); *Crump*, 181 Ill. App. 3d at 62; see also *Hill v. Walker*, 241 Ill. 2d 479, 486-87 (2011) (where supreme court noted that it has consistently held that parole is not a right, but a matter of grace, and thus concluded that there was no due process right to parole).

¶ 13 Here, as in *Crump*, 181 Ill. App. 3d at 62, defendant challenged the result of the Board's exercise of its discretion, and essentially requested that the Board be directed to exercise its discretion in a certain manner. Application of *mandamus* is restricted to directing that action be taken and is not available to direct *what* action should be taken. *Pardo v. Chrans*, 174 Ill. App. 3d 549, 554 (1988). Thus, his allegation that the Board unlawfully and unconstitutionally denied him parole does not state a cause of action for *mandamus* relief (*Crump*, 181 Ill. App. 3d at 62-63), and we find no abuse of discretion by the circuit court in denying his *habeas corpus*/*mandamus* petition.

¶ 14 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.