NO. 4-10-0378 Order Filed 5/13/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

BILLY SPRINKLE, Plaintiff-Appellant, v. AUSTIN RANDOLPH, JR., Acting Warden, Logan Correctional Center; and the ILLINOIS DEPARTMENT OF CORRECTIONS, Record Office, Defendants-Appellees.	) Appeal from) Circuit Court of) Logan County) No. 09MR106)) Honorable) Thomas M. Harris,) Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justices Steigmann and Appleton concurred in the judgment.

ORDER

Held: The circuit court properly dismissed the *habeas corpus* petition of plaintiff, who in 1969 was sentenced to an indeterminate term of 75 to 90 years' imprisonment. The General Assembly, when enacting legislation effective on February 1, 1978, which changed the way good-conduct credit was earned and awarded, did not give plaintiff full credit against his entire sentence under the former scheme *and* give him day-for-day good-conduct credit against that part of his sentence served after February 1, 1978.

Plaintiff, Billy Sprinkle, appeals the order dismissing his December 2009 *pro se* petition for a writ of *habeas corpus*. We affirm.

I. BACKGROUND

In January 1969, following convictions of murder and deviate sexual assault, Sprinkle was sentenced to an indeterminate term of not less than 75 years and not more than 90 years' imprisonment. While imprisoned, Sprinkle committed aggravated battery and was sentenced in April 1977 to an indeterminate

sentence of 1 to 10 years, to be served consecutively to the sentence he was serving. Sprinkle, thereafter, had a maximum release date of 100 years. Over the years, Sprinkle was twice released on parole, but twice returned to prison as a "technical parole violator."

In December 2009, Sprinkle filed his *pro se* petition for a writ of *habeas corpus* against defendants, Austin S. Randolph, in his capacity as "warden," and the Illinois Department of Corrections (DOC). Sprinkle alleged he was wrongfully held in prison because his maximum sentence had expired and defendants, who erred in calculating his good-time credit, refused to release him. Sprinkle maintained DOC incorrectly interpreted a 1978 change in the law and the later decision of *Johnson v. Franzen*, 77 Ill. 2d 513, 397 N.E.2d 825 (1979), to deny him good-conduct credit he believed he was due. Sprinkle argued DOC, the day he began serving his sentence in 1969, awarded him the statutory good-time credit against his entire sentence. According to Sprinkle, when the General Assembly enacted legislation giving prisoners good-conduct credit for each day served as of February 1, 1978, he was entitled to the statutory good-time credit awarded by DOC in 1969 in addition to the day-for-day good-conduct credit that began on February 1, 1978.

In March 2010, defendants moved to dismiss Sprinkle's petition. Defendants argued Sprinkle's claim was moot, because Sprinkle sought a recalculation of his sentencing credit, which was provided in February 2010. In reply, Sprinkle argued he did

not seek a simple recalculation. Sprinkle maintained DOC erroneously applied the law in its recalculation.

In April 2010, the circuit court dismissed Sprinkle's petition. This appeal followed.

II. ANALYSIS

On appeal, we consider the circuit court's order granting defendants' motion to dismiss. Defendants set forth two separate theories for dismissal of Sprinkle's *mandamus* petition. When defendants filed their motion to dismiss, they argued mootness, moving to dismiss Sprinkle's petition under section 2-619 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619 (West 2008)). Based on Sprinkle's response to their motion to dismiss, defendants now argue Sprinkle failed to state a claim for *mandamus*, an argument based on section 2-615 of the Procedure Code (see 735 ILCS 5/2-615 (West 2008)). The distinction is not relevant to this appeal. First, Sprinkle has not argued prejudice by the defendants' change in argument. Second, we review dismissals under sections 2-619 and 2-615 using the same *de novo* standard of review. See *Grimes v. Saikley*, 388 Ill. App. 3d 802, 810, 904 N.E.2d 183, 189 (2009). Moreover, this court may affirm the dismissal of a case on any grounds appearing in the record. See *Gunthorp v. Golan*, 184 Ill. 2d 432, 438, 704 N.E.2d 370, 373 (1998).

Sprinkle's petition for *mandamus* asks this court to order defendants to recalculate his good-time credits and sentence based on his interpretation of the law. In order to state

a claim for *mandamus*, Sprinkle must allege facts, "when construed in the light most favorable to [Sprinkle]," sufficiently establish Sprinkle has a clear right to the relief requested, defendants have a clear duty to act, and defendants have clear authority to comply with the writ. *Russell v. Blagojevich*, 367 Ill. App. 3d 530, 532-33, 853 N.E.2d 920, 923 (2006). Sprinkle has not set forth allegations that establish a clear right to relief.

Sprinkle's lengthy indeterminate sentence, beginning in 1969, spans a period in which multiple systems were used to calculate an inmate's good-conduct credit. Sprinkle contends, as a result of a February 1, 1978, systemic change, DOC has held him past his release date and he must be released.

Our supreme court, in *Johnson*, summarized the two systems of calculating good-conduct credit both before and after February 1, 1978. Before February 1, 1978, DOC awarded both statutory and compensatory good-time credits:

> "Until February 1, 1978, Illinois had a system of indeterminate sentences in which those committed to [DOC] for commission of a felony were sentenced to minimum and maximum terms of imprisonment [(Citation)]. Good-conduct credits were applied to the minimum term to advance the date of parole eligibility and to the maximum to advance the date beyond which a prisoner could not be incarcerated. [DOC] was required to prescribe, at a rate within

its discretion, a schedule of good-conduct credits for good behavior [(Citation)]. These were known as 'statutory good time credits.' [DOC] was also empowered to award good-conduct credits to prisoners who performed work assignments or participated in other [DOC] programs [(Citation)]. These credits were known as 'compensatory good time credits.'" *Johnson*, 77 Ill. 2d at 516, 397 N.E.2d at 826.

After February 1, 1978, DOC awarded day-for-day good-conduct credits:

> "Effective February 1, 1978, the General Assembly amended the Unified Code of Corrections [(Unified Code)] and replaced in some instances the indeterminate sentencing system with a fixed or determinate sentencing system [(Citation)]. The [Unified] Code no longer gives [DOC] authority to award compensatory good-conduct credits [(Citation)] and no longer gives [DOC] the authority to award statutory good-time credit at a discretionary rate [(Citation)]. The [Unified] Code expressly directs [DOC] to prescribe rules and regulations providing for good-conduct credits on a day-for-day basis." *Johnson*, 77

Ill. 2d at 516, 397 N.E.2d at 826.

Since the *Johnson* decision, the General Assembly also enacted truth-in-sentencing legislation. See *People v. Reedy*, 186 Ill. 2d 1, 17-18, 708 N.E.2d 1114, 1121-22 (1999). Under this legislation, inmates who commit certain violent offenses, are denied day-for-day good-conduct credit. See *e.g.* 730 ILCS 5/3-6-3(a)(2) (West Supp. 2009). According to an affidavit signed by a records officer for the DOC, "Sprinkle is ineligible for day-for-day good conduct credit because of the 1969 controlling offense." Sprinkle has provided no legal argument contradicting this claim.

The *Johnson* court considered which of the two systems should be used to calculate good-conduct credit when an inmate, sentenced to an indeterminate term, served part of his sentence before February 1, 1978, and part of the sentence after that date. *Johnson*, 77 Ill. 2d at 522, 397 N.E.2d at 829. The court concluded DOC should use the older system for calculating an inmate's sentencing credit for the part of the sentence served before February 1, 1978, and the newer system for that part of the sentence served after February 1, 1978. *Johnson*, 77 Ill. 2d at 522, 397 N.E.2d at 829.

In *Williams v. Irving*, 98 Ill. App. 3d 323, 326, 424 N.E.2d 381, 384 (1981), the Third District Appellate Court considered whether *Johnson* should be strictly followed when its application resulted in longer sentences for inmates serving indeterminate sentences covering periods before and after Febru-

ary 1, 1978. The *Williams* plaintiffs claimed, under *Johnson*, they must be given the *full amount* of the statutory good-time credit DOC awarded to them when they began their sentences plus the day-for-day good-conduct credit for the parts of their sentences served after February 1, 1978. *Williams*, 98 Ill. App. 3d at 326, 424 N.E.2d at 384. The Third District concluded it was proper to use the older system to calculate good-time credit for prisoners for their entire sentences when such calculations benefitted the prisoners. *Williams*, 98 Ill. App. 3d at 326, 424 N.E.2d at 384. In reaching this decision, the *Williams* court rejected the argument prisoners were entitled to the full amount of the statutory good-time credit DOC applied at the start of those sentences in addition to day-for-day good-conduct credit. *Williams*, 98 Ill. App. 3d at 328, 424 N.E.2d at 385. The court determined these prisoners were only entitled to a *pro rata* share based on the amount of actual time the prisoners served before February 1, 1978. *Williams*, 98 Ill. App. 3d at 328, 424 N.E.2d at 385.

In *Brown v. Washington*, 311 Ill. App. 3d 729, 732, 724 N.E.2d 583, 585 (2000), the Second District Appellate Court rejected the same argument raised in *Williams*. The *Brown* plaintiff "sought to be credited for the full amount, rather than only a *pro rata* share, of his statutory good-time credit for the time he served on his sentence prior to February 1, 1978, *and* day-for-day good time for the time he ha[d] served since February 1, 1978." (Emphasis in original.) *Brown*, 311 Ill. App. 3d at 732,

724 N.E.2d at 585. The *Brown* court determined the trial court properly denied the plaintiffs' claim under *Williams*. *Brown*, 311 Ill. App. 3d at 732, 724 N.E.2d at 585.

Here, despite the holdings in *Williams* and *Brown*, Sprinkle makes the same claim. Sprinkle contends DOC had the policy of awarding each prisoner receiving an indeterminate sentence the entire amount of statutory good-time credit when that prisoner began serving his or her sentence. Sprinkle maintains *Williams* is distinguishable because the Third District did not have necessary information.

In support of his claim DOC awarded him the statutory good-time credit against his sentence in full, Sprinkle relies on statements of DOC employees. First, Sprinkle cites an affidavit by Lila Koches, chief record officer for DOC. In this affidavit, Koches avers statutory good-time credit was awarded at the beginning of an inmate's sentence:

> "[DOC] does not have any documents breaking down statutory good[-]time credits on a month[-]by[-]month basis due to the fact that statutory good time is awarded at the beginning of any indeterminate inmate's incarceration and is reflected on the calculation sheet. Compensatory good time is awarded each month at the rate of 7.5 days per month if an inmate is not in segregation status three or more days each month."

Second, Sprinkle relies on an August 2008 letter to Sprinkle from Ona Welch, assistant chief record officer with DOC, in which Welch stated the following:

> "Statutory good time was awarded to you when you entered the system. In addition, you receive compensatory good time of 7.5 days per month for every month in custody when you were not in segregation status."

Relying on *United States ex rel. Miller v. Twomey*, 479 F.2d 701, 716 (7th Cir. 1973), Sprinkle contends because the statutory good-time credits were awarded to him, they were his and could not be taken away.

We do not find Sprinkle's arguments convincing. In *Williams*, the plaintiffs submitted bookkeeping records to show DOC gave them full statutory good-time credit up front. *Williams*, 98 Ill. App. 3d at 328, 424 N.E.2d at 385. The court recognized the resolution of the issue depended upon DOC's policy as to statutory good-time credits:

> "If [DOC's] policy was to award the full amount of statutory good time upon initial incarceration, then the prisoners are entitled to the full amount. If, on the other hand, statutory good time was earned by a prisoner through serving his sentence with good behavior, then the prisoners are only entitled to the good time they had earned

prior to February 1, 1978." *Williams*, 98 Ill. App. 3d at 327, 424 N.E.2d at 384.

The court then examined DOC regulations. The court emphasized language showing "'six months of good time is earned for each additional year'" and forfeiture of statutory good-time credit "'may deprive such individual of any portion or all of the good time that such person may have earned *or may earn in the future*.'" (Emphasis in original.) *Williams*, 98 Ill. App. 3d at 327-28, 424 N.E.2d at 385. The court determined this language, "as well as *** the inherent nature of statutory good-time credits," that DOC's "policy was to award statutory good-time credits based upon a prisoner's good behavior during the time he served." *Williams*, 98 Ill. App. 3d at 328, 424 N.E.2d at 385.

Sprinkle's evidence is similar to the bookkeeping-entry evidence presented in *Williams*. The comments of two DOC employees characterizing the statutory good-time credits as "awarded" does not establish the policy of the DOC was to give all prisoners such credits whether such prisoners exhibited good behavior during their imprisonment. We agree with the *Williams* court that the statutory good-time credits do not belong to a prisoner until that prisoner earns them. Sprinkle is not entitled to double credit and therefore cannot state a *mandamus* claim.

Twomey is distinguishable. *Twomey* involves the revocation of *earned* statutory good-time credits. See *Twomey*, 479 F.2d at 715.

Sprinkle maintains, however, DOC has no authority not

to award the good-conduct credits to time served after February 1, 1978. Sprinkle argues the statute requires such credits be applied and *Johnson* prohibits application of both types of credit to prisoners.

We disagree. *Williams* provides DOC authority to continue to apply the old system to prisoners sentenced before February 1, 1978, if such system is beneficial to those prisoners. See *Williams*, 98 Ill. App. 3d at 326, 424 N.E.2d at 384. *Williams*, the holding of which serves to benefit prisoners, does not conflict with *Johnson*, the holding of which would have lengthened the sentences of the *Williams* plaintiffs. While *Johnson* involved a prisoner sentenced before February 1, 1978, the prisoner's sentence was relatively short and most of it was to be served after February 1, 1978, making day-for-day good-conduct credit favorable. *Johnson*, 77 Ill. 2d at 515, 397 N.E.2d at 826. *Johnson* does not preclude the application of the old system when a prisoner benefits from such application.

Sprinkle last contends his parole revocation requires DOC to apply the good-conduct credits to his sentence. Sprinkle cites section 3-3-10(b)(1) of the Unified Code (730 ILCS 5/3-3-10(b)(1) (West 2008)) in support.

The language Sprinkle emphasizes in section 3-3-10(b)(1) is the following:

> "(b) If the Board sets no earlier release date:
>
> (1) A person sentenced for any

> violation of law which occurred before January 1, 1973, shall be released under supervision 6 months prior to the expiration of his maximum sentence of imprisonment less good time credit under Section 3-6-3." 730 ILCS 5/3-3-10(b)(1) (West 2008).

Section 3-6-3 does not, however, authorize good-conduct credit for every prisoner. In fact, the section specifically denies the application of good-conduct credit for prisoners who have committed certain offenses, such as first degree murder. See 730 ILCS 5/3-6-3(a)(2)(I) (West Supp. 2009). As mentioned above, the record contains an affidavit from the DOC that states defendant is ineligible for day-for-day good-conduct credit because of his underlying offense. Sprinkle has not contradicted this argument.

Sprinkle does not establish sections 3-6-3 and 3-3-10 affords him a clear right to relief. His argument fails.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.