2012 IL App (4th) 110686-U

Filed 6/20/12

NO. 4-11-0686

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ERNEST BLOSSOM,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
DERWIN L. RYKER, Warden, Lawrence Correctional Center,	)	No. 11MR279
	)	
Defendant.	)	Honorable
	)	John Schmidt
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in dismissing defendant's *mandamus* petition.

¶ 2 In May 2011, plaintiff-appellant, Ernest Blossom, filed a petition for *mandamus* relief against defendant, Derwin L. Ryker, who was then-warden of the Lawrence Correctional Center, arguing Ryker failed to give him credit for time he spent in pretrial custody in Cook County case No. 95-C-220543, *i.e.*, the case on which Blossom is currently incarcerated. On June 17, 2011, the trial court *sua sponte* dismissed Blossom's petition, finding Blossom sought *mandamus* relief for Ryker's discretionary act. Plaintiff appeals *pro se*, arguing the trial court erred in denying his petition. We affirm, but for a different reason than cited by the trial court.

¶ 3 I. BACKGROUND

¶ 4 On May 9, 2011, Blossom filed a *mandamus* petition in Sangamon County.

Blossom's petition named Ryker as the sole defendant. The allegations in Blossom's petition are not entirely clear. However, it appears he is alleging he is entitled to statutorily mandated pre-trial sentencing credit pursuant to section 5-8-7 of the Unified Code of Corrections (730 ILCS 5/5-8-7 (West 1998)) for the period between July 5, 1995, and November 20, 1997. Blossom's petition alleges he had been continuously incarcerated since July 5, 1995, on Cook County case No. 95-C-220543. Defendant is currently in the Illinois Department of Corrections (DOC) pursuant to his convictions in case No. 95-C-220543.

¶ 5 Defendant attached two sentencing orders to his *mandamus* petition. On November 1, 1999, a Cook County trial court sentenced Blossom in case No. 95-C-220543 to 30 years for armed robbery and 5 year terms for the two aggravated-unlawful-restraint convictions. The trial court's sentencing order did not grant Blossom any credit for time served. Instead, the court ordered Blossom's sentences to run consecutive to a sentence in a separate case, case No. 95-C-550315.

¶ 6 On November 23, 1999, the Cook County trial court filed a corrected sentencing order. Under the new order, Blossom's sentences in case No. 95-C-220543 were no longer consecutive to his sentence in case No. 95-C-550315, and Blossom was given credit for time served since November 21, 1997.

¶ 7 On June 17, 2011, before defendant entered his appearance, the trial court *sua sponte* dismissed Blossom's petition, finding Blossom sought *mandamus* relief for a discretionary act of Ryker. The court found this was not an appropriate subject for *mandamus* relief.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Trial courts have the authority to *sua sponte* dismiss *mandamus* petitions having no basis or merit in law or fact, *i.e.*, where the claimant cannot possibly win relief. *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1127, 815 N.E.2d 443, 449 (2004); see also *People v. Vincent*, 226 Ill. 2d 1, 13, 871 N.E.2d 17, 26 (2007). However, this court has stated, "A trial court should not *sua sponte* dismiss a petition if the claims therein are arguable on their merits." *Cannon*, 351 Ill. App. 3d at 1127, 815 N.E.2d at 449.

¶ 11 In *Cannon*, this court addressed the allegations the petitioner in that case made to determine which allegations were clearly without basis in law or fact. However, this court also stated:

> "we reiterate our statement in *Mason*, 332 Ill. App. 3d at 843, 774 N.E.2d at 464, that—given that this court would be reviewing the trial court's decision without the benefit of argument from the defendant—when a trial court *sua sponte* dismisses a [Department of Corrections (DOC)] inmate's *mandamus* petition, the court should also set forth in the record the basis upon which that determination was made." *Cannon*, 351 Ill. App. 3d at 1134-35, 815 N.E.2d at 454-55.

¶ 12 Trial courts should not *sua sponte* dismiss *mandamus* petitions without providing this court with the reasoning for their rulings other than a simple declaration the petition is frivolous and without merit. See *Dupree v. Patchett*, 361 Ill. App. 3d 789, 790, 838 N.E.2d 305, 306 (2005). In *Dupree*, this court said, "Thus in future cases, we recommend trial courts expressly state their reasons for the *sua sponte* dismissal and cite authority in support of their

reasoning." *Id*.

¶ 13 In this case, the trial court stated it was dismissing Blossom's *mandamus* petition because Blossom was seeking *mandamus* relief for something over which defendant had discretion. Understandably, it appears the trial court may have misinterpreted Blossom's petition. Blossom's petition did not focus on discretionary credits.

¶ 14 However, because we can affirm based on any reason found in the record, we do not find the trial court erred in dismissing Blossom's petition. To state a claim for mandamus relief, a petitioner "must allege 'facts which establish a clear right to the relief requested, a clear duty of the respondent to act, and clear authority in the respondent to comply with the writ.' " *Neville v. Walker*, 376 Ill. App. 3d 1115, 1118, 878 N.E.2d 831, 833 (2007) (quoting *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 133, 688 N.E.2d 81, 86 (1997)). Blossom does not explain in his brief how warden Ryker has a clear duty, or power for that matter, to determine a trial court judge miscalculated the amount of credit to which Blossom is entitled for days spent in custody prior to his sentence for a criminal offense and then credit Blossom with those additional days. In fact, Blossom completely ignores Ryker in his brief, instead shifting his focus to DOC generally. As a result, we find Blossom forfeited any issue with regard to the trial court's dismissal of his *mandamus* petition directed at Ryker. See Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008).

¶ 15 Even if we ignored the forfeiture and reviewed this case on the merits, Blossom's *mandamus* petition against warden Ryker is clearly frivolous and patently without merit when his argument implicitly concedes the warden is following the trial court's sentencing order. In fact, Blossom attached to his petition a copy of correspondence from DOC explaining DOC was

bound by the court order and, until that sentencing order was modified, DOC had to calculate Blossom's credit in accordance with the sentencing order. This correspondence also noted Blossom's multiple requests for additional credit had all been denied by the trial court.

¶ 16 III. CONCLUSION

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

¶ 18 Affirmed.