

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).

NO. 4-12-0102

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

4<sup>th</sup> District Appellate  
Court, IL

JOSEPH YURKOVICH,  
Defendant-Appellee.

) Appeal from  
) Circuit Court of  
) Sangamon County  
) No. 11MR691  
)  
) Honorable  
) John Schmidt,  
) Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.  
Justices Steigmann and Pope concurred in the judgment.

## ORDER

¶ 1 *Held:* The trial court's *sua sponte* dismissal of prisoner's *pro se mandamus* petition was premature and the matter not ripe for adjudication where defendant had never been served with the petition.

¶ 2 Plaintiff, Raymond Scott, appeals the trial court's dismissal of his *pro se mandamus* petition. We vacate the court's judgment and remand for further proceedings.

¶ 3 On November 21, 2011, plaintiff, an inmate in the Illinois Department of Corrections (DOC), filed a *pro se* petition of *mandamus*. He sought to compel defendant, Joseph Yurkovich, the warden of facility where he was imprisoned, to conduct a hearing and restore his good-conduct credits. The record fails to show service of plaintiff's petition on defendant. On January 2, 2012, the trial court dismissed the petition as frivolous.

¶ 4 This appeal followed.

¶ 5 On appeal, plaintiff submitted a handwritten brief, consisting of 1 1/2 pages. Because defendant was never served with plaintiff's petition, he is not a party to the appeal and did not file an appellee's brief. Recently, this court has held that such cases are not "'ripe for adjudication.'" *Powell v. Lewellyn*, 2012 IL App (4th) 110168, ¶ 9, 2012 WL 3985891, at \*1 (quoting *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009)). In that case, we found the trial court prematurely dismissed a prisoner's *pro se* petition where dismissal occurred two weeks after the petition was filed and prior to service of the petition on the defendants. *Powell*, 2012 IL App (4th) 110168, ¶¶ 9-11, 2012 WL 3985891, at \*1-2.

¶ 6 Here, the trial court dismissed defendant's *pro se* petition six weeks after it was filed and also before service of the petition on defendant. As in *Powell*, this case is not ripe for adjudication. We vacate the dismissal of plaintiff's *pro se* petition and remand to the trial court for further proceedings during which defendant may be served and given an opportunity to respond to the petition or, upon plaintiff's failure to serve defendant, the court may dismiss the case for want of prosecution.

¶ 7 For the reasons stated, we vacate the trial court's judgment and remand for further proceedings.

¶ 8 Judgment vacated; cause remanded for further proceedings.