

**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).

**FILED**

April 29, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2014 IL App (4th) 130682-U

NO. 4-13-0682

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JAMES R. EDENS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
S.A. GODINEZ and JULIA BICKLE,	)	No. 11MR689
Defendants-Appellees.	)	
	)	Honorable
	)	John Schmidt,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Justices Pope and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly dismissed plaintiff's *mandamus* complaint, which alleged he is eligible for an additional eight days of good-conduct credit because he will serve eight leap-year days during his anticipated imprisonment.

¶ 2 In February 2013, plaintiff, James R. Edens, filed a *mandamus* complaint alleging the Illinois Department of Corrections (Department) improperly calculated his anticipated release date. In April 2013, defendants filed a motion to dismiss pursuant to sections 2-615, 2-619, and 2-619.1 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615, 2-619, 2-619.1 (West 2012)). In July 2013, the trial court granted defendants' motion to dismiss.

¶ 3 Plaintiff argues the trial court erred when it granted defendants' motion to dismiss. He contends (1) *res judicata* does not bar his claims, (2) the Department's "policy" of not

calculating February 29 in his good-time credit violates sections 5-8-7 and 3-6-3 of the Unified Code of Corrections (Ill. Rev. Stat. 1985, ch. 38, ¶¶ 5-8-7, 3-6-3), and (3) the Department's calculation of sentence with a 366-day year violates separation of powers. We affirm.

¶ 4

## I. BACKGROUND

¶ 5 In February 2013, plaintiff filed a *mandamus* complaint alleging the Department has "an illegal rule, regulation and or [sic] policy albeit unwritten, it seems to be long[-]standing, serupticiously [sic] denying Plaintiff \*\*\* credit for February 29th, a leap year served in the [Department]." Plaintiff cited to an inmate's grievance report to support his assertion. The Department's response in the grievance report states defendant "does not get an extra day for [a] leap year after sentencing."

¶ 6 In April 2013, defendants filed a motion to dismiss pursuant to sections 2-615, 2-619, and 2-619.1 of the Procedure Code (735 ILCS 5/2-615, 2-619, 2-619.1 (West 2012)). We note Julia Bickle is the Department's current assistant chief records officer and is substituted for the previous officeholder as a matter of law. See 735 ILCS 5/2-1008(d) (West 2012).

Defendants' motion stated plaintiff received a 65-year prison sentence and has been in custody since March 22, 1984, and is scheduled to be released from prison on September 22, 2016. Plaintiff's scheduled release date is exactly 32 1/2 years after his custody date. Thus, he has received the day-for-day credit for every day he has served because he is scheduled to serve half of his prison sentence before being released. The motion asserted plaintiff's complaint should be dismissed pursuant to (1) section 2-615 of the Procedure Code because he is receiving all the credit he is due, and (2) section 2-619 of the Procedure Code because his complaint is barred by *res judicata* as he had previously raised a claim the Department improperly calculated his

sentence. See *Edens v. Godinez*, 2013 IL App (4th) 120297, 985 N.E.2d 312.

¶ 7 In May 2013, plaintiff filed a response to defendants' motion to dismiss. Plaintiff stated the September 22, 2016, release date gave "no contemplation of leap years" and calculated his release date as September 14, 2016. In July 2013, the trial court found defendant received all the sentencing credit he was allowed. The court dismissed plaintiff's complaint.

¶ 8 This appeal followed.

## ¶ 9 II. ANALYSIS

¶ 10 Plaintiff argues the trial court erred when it granted defendants' motion to dismiss. He contends (1) *res judicata* does not bar his claims, (2) the Department's "policy" of not calculating February 29 in his good-time credit violates sections 5-8-7 and 3-6-3 of the Unified Code of Corrections (Ill. Rev. Stat. 1985, ch. 38, §§ 5-8-7, 3-6-3), and (3) the Department's calculation of sentence with a 366-day year violates separation of powers. Defendants argue plaintiff has not alleged facts suggesting he has been denied day-for-day credit, his claims are barred by *res judicata*, and he has forfeited his second and third arguments. We affirm.

### ¶ 11 A. Standard of Review

¶ 12 Section 2-619.1 of the Procedure Code allows a party to file a motion combining a section 2-615 motion to dismiss with a section 2-619 motion to dismiss. 735 ILCS 5/2-619.1 (West 2012). "A section 2-615 motion to dismiss tests the legal sufficiency of a complaint. A section 2-619 motion to dismiss admits the sufficiency of the complaint, but asserts affirmative matter that defeats the claim." *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21, 986 N.E.2d 626. We review a dismissal under either section 2-615 or section 2-619 *de novo*. *Id.*

### ¶ 13 B. Plaintiff's *Mandamus* Claim

¶ 14 In *McFatridge v. Madigan*, 2013 IL 113676, ¶ 17, 989 N.E.2d 165, the supreme court recently described *mandamus* as follows:

" '*Mandamus* is an extraordinary remedy used to compel a public officer to perform nondiscretionary official duties.' [Citations.] In order to obtain a *mandamus* remedy, the plaintiff must establish a clear right to the requested relief, a clear duty of the public officer to act, and clear authority of the public officer to comply with the order. [Citation.] A writ of *mandamus* is appropriate when used to compel compliance with mandatory legal standards but not when the act in question involves the exercise of a public officer's discretion. [Citation.]"

¶ 15 Plaintiff claims he is entitled to *mandamus* because the Department improperly calculated his projected release date. We begin with whether plaintiff has alleged sufficient facts to suggest a clear right to the requested relief. As part of our analysis, we take plaintiff's allegation he is entitled to day-for-day credit as true. See *Bonhomme v. St. James*, 2012 IL 112393, ¶ 34, 970 N.E.2d 1. Plaintiff asserts he is entitled to an additional eight days' credit because there are eight leap years between 1984 and 2016. However, plaintiff has not alleged the Department uses a 365-day calendar regardless of whether the year has 365 or 366 days or any other facts showing the Department has denied him credit for days he has served in prison. Our calendar system—the Gregorian calendar—is composed of a 12-month year of 365 days, with a leap year (generally occurring in years divisible by four) having 366 days, and the months each having 30 or 31 days, except for February, which has 28 days (or 29 days in leap years).

When plaintiff was sentenced to 65 years in prison he was sentenced to serve 65 calendar years, not 65 terms of 365 days. See 5 ILCS 70/1.10 (West 2012) (stating "year" means a calendar year). In reviewing plaintiff's pleadings, it is apparent he misunderstood the Department's explanation it does not award "extra" credit for leap days. He has taken this to mean the Department does not award *any* credit for a leap day. Plaintiff's calculation shows his position results in "double credit" for leap days, *i.e.*, "extra" credit. He divides his 65-year prison sentence in half to account for day-for-day credit and then subtracts another eight days to reach the conclusion he should be released on September 14, 2016. This gives him double credit for leap days, and we find no basis for this result.

¶ 16 Assuming plaintiff receives day-for-day credit for every day of his 65-year prison sentence, he would be eligible for release from prison after 32 1/2 years. As defendants have previously pointed out, plaintiff's custody date is March 22, 1984, and his projected release date is September 22, 2016. September 22, 2016, is exactly 32 1/2 years after March 22, 1984. It is important to note the September 22, 2016, release date is subject to modification depending on future events and is only a *projected* release date assuming plaintiff acts in accordance with the rules for earning good-conduct credit. See 730 ILCS 5/3-6-3(c), (d) (West 2012) (rules for revoking good-conduct credit). Plaintiff has failed to allege sufficient facts showing he is entitled to *mandamus* relief. Because we may affirm on any basis in the record, we do not address the parties' other arguments.

¶ 17 III. CONCLUSION

¶ 18 We affirm the judgment of the trial court.

¶ 19 Affirmed.