2015 IL App (4th) 140697-U

NO. 4-14-0697

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 10, 2015
Carla Bender
4th District Appellate
Court, IL

PATRICK O'CONNOR, Plaintiff-Appellant, v. MARVIN REED, Warden; RITA ROSSI, Records Office Supervisor; and JACKSONVILLE CORRECTIONAL CENTER, Defendants-Appellees.	)	Appeal from Circuit Court of Morgan County No. 14MR61 Honorable Christopher E. Reif, Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the circuit court did not err by dismissing *sua sponte* plaintiff's petition for *mandamus* relief where plaintiff failed to demonstrate a clear duty for defendants to act.

¶ 2 Plaintiff, Patrick O'Connor, is an inmate at the Jacksonville Correctional Center (Jacksonville). In July 2014, plaintiff filed a petition for *mandamus* relief against defendants, Jacksonville, warden Marvin Reed, and records-office supervisor Rita Rossi. Plaintiff's petition asserted defendants had improperly withheld pretrial sentencing credit when calculating plaintiff's release date. The following day, the circuit court dismissed plaintiff's petition as frivolous and without merit because defendants did not have a duty to comply with plaintiff's demand. Later that month, plaintiff filed a motion to reconsider, which the court denied the following day.

¶ 3 Plaintiff appeals, asserting the circuit court erred by dismissing, *sua sponte*, his petition for *mandamus* relief. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 On August 29, 1991, police arrested plaintiff for numerous offenses surrounding the murder and sexual assault of his wife. In September 1993, plaintiff was convicted and sentenced to 50 years in the Department of Corrections (DOC) for the offense of first degree murder (Ill. Rev. Stat. 1990, ch. 38, ¶ 9-1) to be served concurrently with a 20-year sentence to DOC for aggravated criminal sexual assault (Ill. Rev. Stat. 1990, ch. 38, ¶ 12-14) (Cook County case No. 91-CR-22972). Plaintiff subsequently filed a petition for postconviction relief, which the trial court denied. In 2001, the appellate court, in *People v. O'Connor*, No. 1-99-1199 (2001) (unpublished order under Supreme Court Rule 23), reversed the trial court's order and remanded the case for a retrospective fitness hearing. Thereafter, based on the record before us, we presume the trial court vacated plaintiff's conviction and sentence.

¶ 6 In 2005, plaintiff again appeared before the trial court to resolve this case. He entered a plea of guilty but mentally ill to the offenses of first degree murder (Ill. Rev. Stat. 1990, ch. 38, ¶ 9-1) and aggravated criminal sexual assault (Ill. Rev. Stat. 1990, ch. 38, ¶ 12-14). The trial court subsequently sentenced plaintiff to 44 years in DOC for first degree murder to be served consecutively to a 6-year DOC sentence imposed on the aggravated-criminal-sexual-assault conviction. The court noted, pursuant to the laws in effect in 1991, plaintiff would be eligible for day-for-day credit on both counts. Further, plaintiff would receive credit for the time he spent in custody, dating back to the day of his arrest. Since his arrest on August 29, 1991, plaintiff had remained continuously in custody.

¶ 7 On July 2, 2014, plaintiff filed numerous documents in the Circuit Court of Morgan County, including a (1) motion for leave to file a petition for *mandamus* relief, (2) petition for mandamus relief, (3) memorandum of law in support of his petition, (4) motion for appointment of counsel, and (5) motion to proceed *in forma pauperis*. Plaintiff's petition for *mandamus* relief asserted defendants failed to perform their clear duty to properly calculate and apply his pretrial detention credit. Attached to plaintiff's petition were several exhibits including, (1) DOC records reflecting plaintiff's sentence and projected June 2016 release date, (2) the calculation sheet used by DOC officials in calculating plaintiff's release date, (3) a letter plaintiff wrote to the Jacksonville records office disputing the calculation of his sentencing credit, (4) a grievance report that directed plaintiff to contact the records office, and (5) transcripts from the 2005 court proceedings in which plaintiff entered his plea of guilty and received his DOC sentence.

¶ 8 In his petition for *mandamus* relief, plaintiff calculated his sentencing credit as follows. Between plaintiff's 1991 arrest and his 2005 resentencing, approximately 14 years had elapsed. Because he was serving a sentence for two offenses, first degree murder and aggravated criminal sexual assault, plaintiff asserted he was entitled to credit for 28 years (14 years for each charge). Furthermore, plaintiff contended he should receive day-for-day credit on each sentence, which would account for an additional 28 years of sentencing credit (14 years for each charge). Essentially, plaintiff argued that by his 2005 sentencing date, he should have been credited for serving 56 years in DOC (28 years plus 28 years).

¶ 9 On July 3, 2014, the circuit court dismissed *sua sponte* plaintiff's petition as frivolous and without merit, as DOC officials did not have the duty or authority to comply with

plaintiff's demands. Later that month, plaintiff filed a motion to reconsider, which the court denied the following day.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiff asserts the circuit court erred by dismissing *sua sponte* his petition for *mandamus* relief because he demonstrated defendants failed to exercise their clear duty to properly calculate his sentencing credit. During the pendency of this appeal, the Attorney General's office submitted a letter of noninvolvement advising the office does not represent any party on appeal.

¶ 13 *Sua sponte* dismissal of a complaint for *mandamus* relief is an extraordinary action. *Bilski v. Walker*, 392 Ill. App. 3d 153, 158, 924 N.E.2d 1034, 1039 (2009). However, a circuit court has the authority to dispose of a complaint for *mandamus* relief *sua sponte* where the complaint is frivolous and without merit. *Mason v. Snyder*, 332 Ill. App. 3d 834, 842, 774 N.E.2d 457, 464 (2002). In doing so, the court should set forth an explanation to justify its dismissal. *Bilski*, 392 Ill. App. 3d at 158, 924 N.E.2d at 1039. We review *de novo* the *sua sponte* dismissal of plaintiff's petition for *mandamus* relief. *People v. Vincent*, 226 Ill. 2d 1, 13, 871 N.E.2d 17, 25-26 (2007).

¶ 14 "*Mandamus* relief is an extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public official where the official is not exercising discretion." *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739, 759 N.E.2d 585, 588 (2001). To establish a claim for *mandamus* relief, a prisoner must show " 'a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ.' "

Hadley v. Montes, 379 Ill. App. 3d 405, 407, 883 N.E.2d 703, 705 (2008) (quoting *People v. Roe*, 201 Ill. 2d 552, 555, 778 N.E.2d 701, 703 (2002)).

¶ 15 In 1991, section 1003-6-3(2) of the Unified Code of Corrections (Unified Code) provided, "the prisoner shall receive one day of good conduct credit for each day of service in prison other than where a sentence of 'natural life' has been imposed. Each day of good conduct credit shall reduce by one day the inmate's period of incarceration set by the court." Ill. Rev. Stat. 1990, ch. 38, ¶ 1003-6-3(2). Section 5-8-7(b) "required that whenever a sentence of imprisonment is imposed, credit must be given for all time spent in custody." *People v. Leggans*, 140 Ill. App. 3d 268, 270, 488 N.E.2d 614, 615 (1986) (citing Ill. Rev. Stat. 1990, ch. 38, ¶ 1005-8-7(b) (repealed by Pub. Act 95-1052, § 95 (eff. July 1, 2009))).

¶ 16 Plaintiff calculated, by the time of his 2005 resentencing, he was entitled to 56 years of sentencing credit (14 years incarcerated on each count plus 14 years of day-for-day credit on each count). In applying this calculation, plaintiff contends he would have already finished serving his sentence at the time of his 2005 resentencing. By asserting this argument, plaintiff contends DOC had a duty to double his sentencing credit for the time he spent in custody.

¶ 17 Plaintiff cites *People v. Harris* for the proposition that " 'consecutive sentences do not constitute a single sentence and cannot be combined as though they were one sentence for one offense.' " *People v. Harris*, 366 Ill. App. 3d 1161, 1165, 853 N.E.2d 912, 916 (2006) (quoting *People v. Carney*, 196 Ill. 2d 518, 530, 752 N.E.2d 1137, 1144 (2001)). However, in *Harris*, that rule of law applied to determining whether the trial court had improperly increased a defendant's sentence in violation of section 5-5-4 of the Unified Code, not to the application of sentencing credit. *Harris*, 366 Ill. App. 3d at 1165, 853 N.E.2d at 916. Plaintiff also cites

People v. Kilpatrick, 167 Ill. 2d 439, 657 N.E.2d 1005 (1995), in support of his argument that consecutive sentences do not constitute a single sentence. Just as in *Harris*, the supreme court in *Kilpatrick* determined whether the trial court improperly increased a defendant's sentence during resentencing. *Id.* at 446, 657 N.E.2d at 1008. In this situation, plaintiff's sentence did not increase upon resentencing. In 1993, plaintiff initially received concurrent sentences for 50 years and 20 years in DOC, whereas, upon resentencing in 2005, he received consecutive sentences of 44 years plus 6 years in DOC. Both sentencing hearings resulted in a 50-year DOC sentence for which plaintiff was entitled to day-for-day credit. Thus, both cases cited by plaintiff are distinguishable and inapplicable to the present case.

¶ 18 In 1991, the plain language of section 5-8-4(e) of the Unified Code stated, where a defendant receives consecutive sentences, DOC "*shall* treat the offender as though he had been committed for a *single term*[.]" (Emphases added.) Ill. Rev. Stat. 1990, ch. 38, ¶ 1005-8-4(e). "Since consecutive sentences are to be treated as a single term of imprisonment, it necessarily follows that defendants so sentenced should receive but one credit for each day actually spent in custody as a result of the offense or offenses for which they are ultimately sentenced." *People v. Latona*, 184 Ill. 2d 260, 271, 703 N.E.2d 901, 907 (1998). In accordance with the Unified Code, defendants were obligated to treat plaintiff's consecutive sentences as one aggregate term of 50 years, reducing that term by the number of days spent in custody prior to sentencing. In other words, plaintiff's 50-year sentence would be reduced by fourteen years (1991 to 2005), from the date of his arrest until the date of his 2005 resentencing. DOC's calculation sheet, which plaintiff attached to his petition, reflects plaintiff received that credit. Because plaintiff received consecutive sentences, defendants were required to treat the calculation of plaintiff's sentences as a single term of imprisonment for which he could receive only one credit for each day spent in

custody. Ill. Rev. Stat. 1990, ch. 38, ¶ 1005-8-4(e). Thus, plaintiff has failed to establish defendants had a duty to apply his calculation of his sentencing credit as it is inconsistent with their directive under the Unified Code.

¶ 19 Because plaintiff has failed to demonstrate DOC officials had a duty to comply with his request, his petition for *mandamus* relief must fail. Accordingly, the circuit court did not err by dismissing *sua sponte* plaintiff's meritless petition for *mandamus* relief.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 22 Affirmed.