

NOTICE

Decision filed 01/21/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 130422-U

NO. 5-13-0422

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

SIDNEY LOGWOOD,

Plaintiff-Appellant,

v.

HIRAM GRAU, Director, Illinois State Police,

Defendant-Appellee.

) Appeal from the
) Circuit Court of
) Crawford County.
)
) No. 13-MR-9
)
) Honorable
) Kimbara Harrell,
) Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.

Presiding Justice Cates and Justice Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: Where the plaintiff failed to establish a clear, affirmative right to *mandamus* relief, the order of the circuit court is affirmed.

¶ 2 The plaintiff, Sidney Logwood, filed a *pro se* complaint for *mandamus* relief (735 ILCS 5/14-101 *et seq.* (West 2012) against the defendant, Hiram Grau, the Director of State Police, seeking to compel Grau to prohibit enforcement of the requirement that Logwood register as a sex offender for the rest of his life. The circuit court granted Grau's motion to dismiss Logwood's complaint with prejudice. We affirm.

¶ 3

BACKGROUND

¶ 4 In December 1996, Logwood pled guilty to one count of criminal sexual assault and was sentenced to four years' imprisonment in the Illinois Department of Corrections (IDOC). As a result of that conviction, Logwood was required to register as a sex offender for 10 years after his release from prison in accordance with the Sex Offender Registration Act (the SORA) (730 ILCS 150/1 *et seq.* (West 2012)).

¶ 5 Logwood began registering as a sex offender in 1998 and ultimately completed the registration period on April 12, 2011. The Department of State Police, which maintains the sex offender registry, notified Logwood that he was no longer required to register under the SORA, but that should he become liable to register again under the SORA, his registration requirement would be reactivated.

¶ 6 On May 1, 2012, Logwood pled guilty to possession of a firearm by a felon and was sentenced to three years in the IDOC. While incarcerated, prison staff informed Logwood that upon his release, he would have to again register as a sex offender because "offenders convicted after July of 2011 that also have a past sex offense conviction have a duty to register as a sex offender in accordance with Public Act 97-0578."

¶ 7 On January 11, 2013, Logwood filed a *pro se* complaint for *mandamus* relief against the defendant, arguing that the defendant had a duty to prohibit the enforcement of the registration requirement. Logwood asked the court to find that the requirement that he register under Public Act 97-578 (see now 730 ILCS 150/3 (West 2012)) was invalid because the statute did not apply to him. Specifically, Logwood argued that he was not obligated to register under section 3(c)(2.1) of the SORA (730 ILCS

150/3(c)(2.1) (West 2012)) because a conviction for criminal sexual assault required only a 10-year registration period when he was convicted, and that he was not categorized as a sexual predator at the time of his conviction. Further, Logwood argued that the amendments to the SORA as applied to him were unconstitutional.

¶ 8 The defendant filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619(a)(9) (West 2012)), arguing that the SORA required Logwood to register for the rest of his life because both elements of section 3(c)(2.1) of the SORA (730 ILCS 150/3(c)(2.1) (West 2012)) were satisfied. In response to the defendant's motion to dismiss, Logwood argued that he was not categorized as a "sexual predator" under section 2 of the SORA (730 ILCS 150/2 (West 2012)) at the time he committed and was arrested for unlawful possession of a firearm by a felon in December 2011 because that section was amended effective January 1, 2012. He argued that the amendments that subsequently categorized him as a sexual predator violated the constitutional prohibition against *ex post facto* laws.

¶ 9 The circuit court granted the defendant's motion to dismiss the complaint with prejudice. Logwood appealed.

¶ 10 ANALYSIS

¶ 11 On appeal, Logwood argues that retroactive application of the SORA is unconstitutional in that the amendments to the SORA as applied to him are *ex post facto* violations, and that the amendments violated his due process rights and Illinois's general savings clause (5 ILCS 70/4 (West 2012)).

¶ 12 We review *de novo* the order granting a motion to dismiss a *mandamus* petition, specifically a motion to dismiss filed pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)). *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998 (2004). *Mandamus* is an extraordinary remedy used to enforce the performance of official duties by a public officer where no exercise of discretion exists. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999). The purpose of *mandamus* is not to substitute the court's discretion and judgment for the discretion of the official. *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739 (2001). *Mandamus* relief will not be granted unless the petitioner can demonstrate a clear, affirmative right to relief, a clear duty of the official to act, and a clear authority in the official to comply with the writ. *Id.* *Mandamus* relief will be granted only if the plaintiff sets forth every material fact needed to demonstrate that he has satisfied the elements of a *mandamus* action. *Turner-El v. West*, 349 Ill. App. 3d 475, 480 (2004). *Mandamus* is not a means to reverse an official's discretionary acts. *Cannon v. Quinley*, 351 Ill. App. 3d 1120, 1131 (2004).

¶ 13 The relevant statutes and statutory amendments at issue are as follows. In 1999, sections 2(E)(1) and 7 of the SORA were amended to provide that any person convicted of criminal sexual assault after July 1, 1999, would be defined as a "sexual predator" rather than a "sex offender," and would therefore be required to register for the remainder of his or her natural life. See 730 ILCS 150/2(E)(1), (7) (West 2000).

¶ 14 In 2011, the SORA was amended again to add sections 2(E)(7) and 3(c)(2.1). Section 2(E)(7) expanded the definition of "sexual predator" to include persons who had been convicted of an offense listed in section 2(E)(1), including criminal sexual assault

prior to July 1, 1999, and who have been convicted of a felony offense after July 1, 2011. 730 ILCS 150/2(E)(7) (West 2012). Section 3(c)(2.1) of the SORA was amended to require that a "sexual predator" as defined by section 2(E)(7) who had successfully completed a 10-year registration period for a sexual assault conviction dating before July 1, 1999, must again register as a sex offender if two conditions are met. 730 ILCS 150/3(c)(2.1) (West 2012). First, the person must register if he has been convicted of any felony offense after July 1, 2011; and second, the offense for which the 10-year registration was served currently requires a registration period of more than 10 years. 730 ILCS 150/3(c)(2.1) (West 2012). At the time of Logwood's May 2012 felony conviction, the SORA classified a person convicted of criminal sexual assault as a "sexual predator" and required that he register for his natural life, and not for a 10-year period.

¶ 15 In Logwood's case, he meets the requirements of section 3(c)(2.1) of the SORA because he was convicted of a felony offense after July 1, 2011, when he was convicted in May 2012 of possession of a firearm by a felon; and second, he was convicted of criminal sexual assault, and as a result of the 2011 amendment of section 2(E)(7), is categorized as a "sexual predator," requiring lifetime registration under the SORA.

¶ 16 Logwood argues that this retroactive application violates the constitutional prohibition of *ex post facto* laws and establishes a clear right to *mandamus* relief. The *ex post facto* clauses of the United States and Illinois Constitutions prohibit the retroactive application of laws inflicting greater punishment than the law in effect at the time a crime was committed. U.S. Const., art. I, § 10, cl. 1; Ill. Const. 1970, art. I, § 16. However,

courts have consistently held that retroactive application of sex offender registration is not a "punishment" prohibited by the *ex post facto* clause. *People v. Malchow*, 193 Ill. 2d 413, 424 (2000); *People v. Fredericks*, 2014 IL App (1st) 122122, ¶ 55. Instead, sex offender registration requirements are considered to be a civil regulatory function without a punitive effect. *Fredericks*, 2014 IL App (1st) 122122, ¶ 61. The application of the statute to Logwood, therefore, is constitutional. *Mandamus* requires that the plaintiff show a clear right to relief. *Hatch*, 325 Ill. App. 3d at 739. No such right can exist when application of the statute as to Logwood is constitutional and valid. As a result, Logwood has failed to show that he has a clear affirmative right to relief and thus fails to establish a valid *mandamus* claim.

¶ 17 In his brief, Logwood also argues that his due process rights were violated with the application of the statute and that the application of the statute violated Illinois's general savings clause. As Logwood did not address these issues in the circuit court, these issues are waived on appeal. See *People v. Clark*, 406 Ill. App. 3d 622, 636 (2010).

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of Crawford County is affirmed.

¶ 20 Affirmed.