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2012 IL App (3d) 120095-U

Order filed October 16, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

DOIAKAH GRAY,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit
Plaintiff-Appellant,	)	Will County, Illinois
	)	
v.	)	Appeal No. 3-12-0095
	)	Circuit No. 11-MR-266
	)	
MARCUS HARDY,	)	Honorable
	)	Marzell L. Richardson, Jr.
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices Holdridge and O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Inmate's *mandamus* action, seeking educational good time credit, was properly dismissed where inmate was convicted of first degree murder and, thus, not entitled to educational good time credit.
- ¶ 2 Plaintiff Doiakah Gray, an inmate at Stateville Correctional Center, filed a petition of *mandamus* seeking the trial court to order defendant Marcus Hardy, the warden of Stateville, to award him educational good time credit. Defendant filed a motion to dismiss for failure to state a

claim. The trial court granted defendant's motion and dismissed plaintiff's petition with prejudice. We affirm.

¶ 3 In 1998, plaintiff was convicted of first degree murder and sentenced to 80 years' imprisonment. In December 1998, plaintiff was sent to Stateville Correctional Center. At Stateville, plaintiff attended various educational, vocational and chemical dependency classes, including three years of vocational barber college, one year of G.E.D. school, one year of law library clerk education, six months of Alcoholics Anonymous, 12 days of anger management classes, and 12 days of drug education classes.

¶ 4 In January 2009, plaintiff filed a grievance at Stateville requesting that he be awarded eight years, four months and five days of earned educational good time credit. The grievance was assigned to a counselor, who responded that the issue was "outside [the] jurisdiction of this facility" and instructed plaintiff to "send to Administrative Review Board." Thereafter, plaintiff sought relief from the Administrative Review Board, which responded by issuing a "Return of Grievance or Correspondence," in March 2009, stating that his claim was "[m]isdirected," and instructing him to "[c]ontact the Record Office with your request or to provide additional information." The document also stated that plaintiff was serving a "day for day" sentence.

¶ 5 In March 2011, plaintiff filed a petition of *mandamus*, seeking an order requiring defendant, Stateville's warden, to award plaintiff educational good time credit of eight years, four months and five days. Defendant filed a motion to dismiss for failure to state a claim, arguing that defendant was not required to award plaintiff educational good time credit because good time credit is discretionary. The trial court agreed with defendant, holding that "[t]he granting of educational good time credit is discretionary in nature." The court dismissed plaintiff's petition with prejudice.

¶ 6

### I. Exhaustion of Administrative Remedies

¶ 7 Defendant first contends that we lack jurisdiction over this appeal because plaintiff failed to exhaust his administrative remedies before filing his *mandamus* action. Plaintiff responds that defendant forfeited this argument by failing to raise it in the trial court.

¶ 8 Failure to exhaust administrative remedies is an affirmative defense that is forfeited if not raised in the trial court. *Millenium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 302 (2010); *Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 254 (2003).

¶ 9 Here, defendant filed a motion to dismiss plaintiff's complaint, arguing only that his decision to grant plaintiff good time educational credit was discretionary. Defendant never raised plaintiff's alleged failure to exhaust administrative remedies as a basis for challenging plaintiff's petition in the trial court. As a result, defendant is precluded from invoking the exhaustion doctrine now. See *Houlihan*, 241 Ill. 2d at 302; *Hawthorne*, 204 Ill. 2d at 254.

¶ 10

### II. *Laches*

¶ 11 Defendant next argues that the doctrine of *laches* should bar plaintiff's *mandamus* action because plaintiff took no action for two years after receiving the Board's "Return of Grievance or Correspondence." Plaintiff responds that defendant forfeited this argument by failing to raise it below.

¶ 12 *Laches* is an affirmative defense that is forfeited if not raised in the trial court. See *City of Chicago v. Alessia*, 348 Ill. App. 3d 218, 228 (2004). Here, defendant never raised the defense of *laches* in the trial court. Thus, "[a]ny reference to it now has been forfeited and consideration of it is improper." *Alessia*, 348 Ill. App. 3d at 228.

¶ 13

### III. *Mandamus* Relief

¶ 14 Plaintiff argues that he is entitled to *mandamus* relief because the warden was required, by statute, to grant him educational good time credit. Defendant responds that plaintiff, who was convicted of first degree murder, is excluded from receiving educational good time credit under the applicable statute.

¶ 15 *Mandamus* is an extraordinary remedy that is granted to enforce the performance of a public officer's official nondiscretionary duties as a matter of right. *Duane v. Hardy*, 2012 IL App (3d) 110845, ¶ 11. For *mandamus* to issue, a plaintiff must establish material facts that demonstrate (1) his clear right to the requested relief, (2) a clear duty on the defendant to act, and (3) clear authority existing in the defendant to comply with an order granting *mandamus* relief. *Id.*

¶ 16 We review *de novo* the dismissal of a petition for *mandamus*. *Duane*, 2012 IL App (3d) 110845, at ¶ 11. We may affirm the trial court's dismissal on any basis supported by the record even if the trial court based its decision on some other ground. *Janda v. United States Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 84.

¶ 17 When a court construes a statute, its primary objective is to ascertain and give effect to the legislature's intent. *Duane*, 2012 IL App (3d) 110845, at ¶ 12. The statute's language is the best indicator of legislative intent and it should be given its plain and ordinary meaning. *Id.* Words and phrases should not be considered in isolation but should be interpreted in light of other relevant provisions and the statute as a whole. *1940 LLC v. County of McHenry*, 2012 IL App (2d) 110753, ¶ 6. We will construe a statute so that no part is rendered meaningless or superfluous. *Id.*

¶ 18 In common usage, the word "however," is a term of qualification. *Illinois Department of Revenue v. Country Gardens, Inc.*, 145 Ill. App. 3d 49, 54 (1986). It qualifies the words or phrases immediately preceding it. *Id.*

¶ 19 Section 3-6-3 of the Unified Code of Corrections (Unified Code) addresses the rules and regulations for early release of inmates from prison. See 730 ILCS 5/3-6-3 (West 2010). Subsection (a)(2.1) addresses general good time credit and provides in pertinent part:

"For all offenses, other than those enumerated in subdivision (a)(2)(I), (ii), or (iii) committed on or after June 19, 1998 \*\*\*, the rules and regulations shall provide that a prisoner who is serving a term of imprisonment shall receive one day of good conduct credit for each day of his or her sentence of imprisonment \*\*. Each day of good conduct credit shall reduce by one day the prisoner's period of imprisonment \*\*." 730 ILCS 5/3-6-3(a)(2.1) (West 2010).

Subsection (a)(4) addresses educational good time credit and provides in pertinent part:

"The rules and regulations shall also provide that the good conduct credit accumulated and retained under paragraph (2.1) of subsection (a) of this Section by any inmate during specific periods of time in which such inmate is engaged full-time in substance abuse programs, correctional industry assignments, or educational programs provided by the Department under paragraph (4) and satisfactorily completes the assigned program as determined by the standards of the Department, shall be multiplied by a factor of 1.25 for program participation before August 11, 1993 and 1.5 for program participation on or after that date. However, no inmate shall be eligible for the additional good conduct credit under this paragraph (4) or (4.1) of the this subsection (a) \*\*\* if convicted of \*\*\* first degree murder, a Class X felony, criminal sexual assault, felony criminal sexual abuse, aggravated criminal sexual abuse, aggravated battery of a firearm \*\* or any predecessor or successor

offenses with the same or substantially the same elements, or any inchoate offenses relating to the foregoing offenses." 730 ILCS 5/3-6-3(a)(4) (West 2010).

¶ 20 The plain language of subsection (a)(4) provides that while inmates who are entitled to day for day credit are generally also entitled to educational good credit, certain inmates are not eligible for educational good time credit, including those "convicted of \*\*\* first degree murder." 730 ILCS 5/3-6-3(a)(4) (West 2010).<sup>1</sup> Since plaintiff was convicted of first degree murder, he is not entitled to educational good time credit.

¶ 21 Plaintiff argues that subsection (a)(4) is ambiguous because the first sentence states that he is entitled to educational credit, and the second sentence states that he is not. We find nothing about subsection (a)(4) ambiguous. While the first sentence sets forth the general rule, the second sentence qualifies it. See *Country Gardens, Inc.*, 145 Ill. App. 3d at 54. The second sentence expressly excludes inmates who have been convicted of first degree murder from the class of inmates entitled to educational good time credit. Because plaintiff was convicted of first degree murder, he is disqualified from receiving educational good time credit.

¶ 22 Since plaintiff is not entitled to educational good time credit, he cannot establish a clear right to his requested *mandamus* relief. Thus, plaintiff's *mandamus* action was properly dismissed with prejudice by the trial court.

¶ 23 For the foregoing reasons, the judgment of the trial court of Will County is affirmed.

¶ 24 Affirmed.

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<sup>1</sup> Since its inception in 1973, the statute has disqualified inmates convicted of first degree murder from receiving educational good conduct credit. See P.A. 77-2097 § 3-6-3 (eff. Jan. 1, 1973) ("no inmate shall be eligible for the additional good conduct credit under this paragraph (4), if convicted of first degree murder, second degree murder or a Class X felony.")