

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).

2012 IL App (4th) 110736-U

Filed 6/20/12

NO. 4-11-0736

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

CURTIS KING,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Vermilion County
S. A. GODINEZ, Director of	)	No. 08MR240
The Department of Corrections; and	)	
THE PRISONER REVIEW BOARD,	)	Honorable
Defendants-Appellees.	)	Karen E. Wall,
	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.  
Justices Steigmann and McCullough concurred in the judgment.

**ORDER**

¶ 1 *Held*: Public Act 90-592 does not violate due-process or separation-of-powers clauses. Circuit court's order dismissing petition for a writ of *mandamus* is affirmed.

¶ 2 Plaintiff, Curtis King, filed a petition for a writ of *mandamus*, seeking to force the Director of the Department of Corrections (Department), to grant him day-for-day good-time credit. The circuit court dismissed the petition. Plaintiff appeals. We affirm.

¶ 3 **I. BACKGROUND**

¶ 4 On November 14, 1999, plaintiff and two other individuals committed the offenses of home invasion and first degree murder in Cook County. Plaintiff, who did not shoot the victim, is currently serving a sentence of 20 years' imprisonment for those offenses and is in the custody of the Illinois Department of Corrections at Danville Correctional Center. On April

14, 2003, the Department issued a sentence-calculation sheet reflecting that plaintiff is required to serve 100% of his 20-year sentence with a projected parole date of November 14, 2019.

¶ 5 On November 24, 2008, plaintiff filed a petition for a writ of *mandamus* in the Circuit Court of Vermilion County, arguing that Public Act 90-592 (Pub. Act 90-592, § 5 (eff. June 19, 1998) (1998 Ill. Laws 1284)), which required him to serve 100% of his 20-year sentence, without the benefit of the day-for-day credit for time served that was previously available, violates due process and the separation-of-powers clause. After several problems with service, defendant S.A. Godinez, who was appointed Director of the Department effective May 2, 2011, filed a section 2-615 motion to dismiss on the basis that Public Act 90-592 was validly enacted to correct a single-subject violation, and not to change or override a judicial construction of a statute. The circuit court dismissed the petition with prejudice on July 26, 2011. Plaintiff timely filed a notice of appeal. Defendant concedes this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 6 II. ANALYSIS

¶ 7 *Mandamus* is an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty. A petition for *mandamus* will be granted only if petitioner establishes 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. *IP Plaza, LLC v. Bean*, 2011 IL App (4th) 110244, ¶ 30, 963 N.E.2d 252, 258. A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint and should be granted only where no set of facts could be proved under the pleadings that would entitle the plaintiff to relief. The grant of a section 2-615 motion to dismiss presents a question of law, which we review *de novo*. *McHenry County Defenders*,

*Inc. v. City of Harvard*, 384 Ill. App. 3d 265, 280, 891 N.E.2d 1017, 1031 (2008).

¶ 8 Prior to August 20, 1995, persons convicted of certain crimes were eligible to receive one day of good-conduct credit for each day served in prison. *People v. Reedy*, 186 Ill. 2d 1, 4, 708 N.E.2d 1114, 1115 (1999), citing 730 ILCS 5/3-6-3(a)(2) (West 1994). Public Act 89-404 effective August 20, 1995, contained a "truth in sentencing" law which made defendants eligible to receive no more than 4 1/2 days of good-conduct credit for each month served. Pub. Act 89-404, § 40 (eff. Aug. 30, 1995) (1995 Ill. Laws 4305, 4323). The supreme court, in *Reedy*, held that Public Act 89-404 violated the single-subject rule and was unconstitutional. *Reedy*, 186 Ill. 2d at 18, 708 N.E.2d at 1122.

¶ 9 Public Act 90-592, effective June 19, 1998, both deleted and recodified the entire truth-in-sentencing legislation originating from Public Act 89-404. *Reedy*, 186 Ill. 2d at 17, 708 N.E.2d at 1121. Public Act 90-592 amended section 3-6-3(a)(2) to provide as follows:

"The rules and regulations on early release shall provide, with respect to offenses committed on or after the effective date of this amendatory Act of 1998, the following:

(i) that a prisoner who is serving a term of imprisonment for first degree murder shall receive no good conduct credit and shall serve the entire sentence imposed by the court[.]" Pub. Act 90-592, § 5 (eff. June 19, 1998) (1998 Ill. Laws 1284).

¶ 10 Plaintiff first argues that Public Act 89-404, the 4-1/2-day-credit legislation, does not apply because the supreme court declared in *Reedy* it violated the single-subject rule. That is

correct, but the real question in this case is the effect of Public Act 90-592, the no-credit legislation. Plaintiff argues Public Act 90-592 violates due process and separation of powers because it was enacted before the Illinois Supreme Court was allowed the opportunity to perform its judicial duties of determining whether Public Act 89-404 violated the single-subject rule. Plaintiff also argues that although the legislature has the power to enact curative legislation, "[c]urative legislation cannot validate or legalize the unconstitutional legislation itself." *Johnson v. Edgar*, 176 Ill. 2d 499, 522-23, 680 N.E.2d 1372, 1383 (1997). In *Reedy*, the supreme court considered whether another piece of legislation, Public Act 89-462, cured or validated Public Act 89-404, concluding that it did not:

"In the case at bar, however, Public Act 89-462 does not recodify the language of the truth-in-sentencing provisions of Public Act 89-404. It only inserts an additional offense to be included in the truth-in-sentencing provision. Moreover, it is entirely devoid of curative language that would validate any actions taken in reliance upon Public Act 89-404. We conclude, therefore, that Public Act 89-462 did not serve as curative legislation for any portion of Public Act 89-404." *Reedy*, 186 Ill. 2d at 15, 708 N.E.2d at 1120.

¶ 11 As the State points out, however, when legislation violates the single-subject rule, the only constitutional defect is the aggregation of unrelated subjects into a larger bill—there is no constitutional defect in the individual components of the larger bill. The legislature can constitutionally reenact smaller portions of the larger bill, so long as the new bill complies with

the single-subject rule. In fact, the supreme court in *Reedy* specifically upheld the constitutionality of Public Act 90-592, which the General Assembly had passed during the pendency of the appeals in that case. "[W]e note that, unlike all preceding amendments to Public Act 89-404, Public Act 90-592 truly served to cure the effect that the former act's invalidation had on the truth-in-sentencing law." *Reedy*, 186 Ill. 2d at 17, 708 N.E.2d at 1121.

¶ 12 Finally, we note that the murder in this case occurred on November 14, 1999, which was more than a year after the June 19, 1998, effective date of Public Act 90-592. See *People v. Dean*, 303 Ill. App. 3d 758, 762, 709 N.E.2d 284, 287 (1999) (an offense must have been committed before June 19, 1998, to be entitled to day-for-day credit under the prior sentencing rules).

### III. CONCLUSION

¶ 13 We affirm the circuit court's judgment.

¶ 14 Affirmed.