

NOTICE
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2012 IL App (4th) 110969-U

Filed 9/14/12

NO. 4-11-0969

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

HERMAN L. NITZ, JR.,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
and)	Sangamon County
MARK MURILLO, RUSSELL SHELBY, JAMES)	No. 11MR289
GOMBASH, and ERIC ROOT,)	
Plaintiffs,)	
MICHAEL P. RANDLE, GLADYSE C. TAYLOR,)	
and S.A. GODINEZ,)	
Defendants-Appellees.)	Honorable
)	John Schmidt,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* Motion to dismiss filed by defendants, current and former directors of the Illinois Department of Corrections (Department), was correctly granted where plaintiff, an inmate in the custody of the Department, filed a complaint for declaratory relief and *mandamus* seeking (1) a declaration inmates have a right to have meritorious good-conduct credit awarded; (2) a declaration an 18-month delay in promulgating eligibility-criteria regulations for meritorious good-conduct credit was unreasonable; and (3) an order mandating the director to award meritorious good-conduct credit to eligible inmate "without delay."

¶ 2 Plaintiff, an inmate in the custody of the Department, filed a complaint for declaratory relief and *mandamus* against defendants, the director and former directors of the Department, for (1) a declaration inmates have a *right* to have meritorious good-conduct credit awarded; (2) a declaration the director's 18-month delay in promulgating eligibility-criteria

regulations for meritorious good-conduct credit was unreasonable; and (3) an order mandating the director to award meritorious good-conduct credit to eligible inmates "without delay." The complaint was dismissed upon defendants' motion and he appealed. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On May 25, 2011, plaintiff, Herman Nitz, Jr., and four other inmates incarcerated at the Department's Danville Correctional Center, filed a complaint for *mandamus* and declaratory relief against defendants Michael P. Randle, S.A. Godinez, and Gladys Taylor. Plaintiffs alleged (1) they had a protected liberty interest in being awarded meritorious good-conduct credits; (2) in January 2010, the director suspended awarding those credits pending revision of the eligibility-criteria regulations; (3) the ensuing 18-month delay in promulgating new regulations as of the date the complaint was filed was unreasonable; and (4) many inmates only agreed to plead guilty based on being told they would receive good-conduct credits. Plaintiffs asked the trial court to (1) certify all inmates held by the Department as a class; (2) declare all inmates have a right to have the meritorious good-conduct credit statute enforced; (3) declare the 18-month delay in promulgating eligibility-criteria "unreasonable;" and (4) order the Department to immediately award 180 days' meritorious good-conduct credit to inmates eligible to receive that credit.

¶ 5 On September 19, 2011, defendants filed a motion to dismiss the complaint and a memorandum of law in support of the motion. Defendants argued the claim for plaintiff and two other inmates was not ripe for review; one named plaintiff's claim was moot as he completed his sentence; and the complaint failed to state a cause of action pursuant to section 2-615 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-615 (West 2010)). On September 25, 2011,

plaintiff filed a "motion to oppose defendants' motion to dismiss." On September 26, 2011, the trial court granted the motion to dismiss. Plaintiff appealed. None of the other inmates who were plaintiffs to this action are included in the appeal.

¶ 6

II. ANALYSIS

¶ 7

The dismissal of plaintiff's action for failure to state a cause of action under section 2-615 of the Civil Code presents a question of law and is reviewed *de novo*. *Loman v. Freeman*, 229 Ill. 2d 104, 109, 890 N.E.2d 446, 451 (2008). Dismissal of an action may be affirmed on any ground found in the record. *Reyes v. Walker*, 358 Ill. App. 3d 1122, 1124, 833 N.E.2d 379, 381 (2005).

¶ 8

The Unified Code of Corrections (Unified Code) (730 ILCS 5/1-1-1 *et seq.* (West 2010)) provides for the award of automatic good-conduct credit, meritorious good-conduct credit, and additional good-conduct credit. The Unified Code prescribes the amount of good-conduct credit inmates automatically receive upon incarceration. 730 ILCS 5/3-6-3(a)(2) to 3-6-3(a)(2.6) (West 2010).

¶ 9

The Unified Code also permits the Director, as a matter of his/her sole discretion, to award meritorious good-conduct credit up to 180 days "for meritorious service in specific instances." 730 ILCS 5/3-6-3(a)(3) (West 2010). The Director may not award meritorious good-conduct credit to an inmate who has served less than 60 days of his sentence. Before awarding meritorious good-conduct credit, the Director must make a written determination the inmate is eligible for good-conduct credit for meritorious service, has served a minimum of 60 days, and has met the eligibility criteria prescribed by rule. *Id.* Effective May 5, 1996, the Department enacted regulations concerning the award of meritorious good-conduct credit. 20 Ill. Adm. Code

107.210 (2012). The regulations provide, in part, the Director "may examine or consider, among other matters" the inmate's complete master file, reports or recommendations made concerning the inmate, rule violations, job performance, educational achievements, and other actions while incarcerated. 20 Ill. Adm. Code 107.210(a) (2012). The Director may unilaterally decide to grant meritorious good-conduct credit and petitions for such credit may be submitted by any inmate or Department staff member. 20 Ill. Adm. Code 107.210(b), (c) (2012).

¶ 10 Inmates may be awarded additional good-conduct credit for participation in educational, vocational, substance abuse, and industry programs. 730 ILCS 5/3-6-3(a)(4) to 3-6-3(a)(4.6) (West 2010).

¶ 11 Plaintiff bases his claim on section 3-6-3 of the Unified Code and argues he has a constitutional right to meritorious good-conduct credit. However, the Unified Code does not create any enforceable rights for inmates beyond those constitutionally required. *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶¶ 16-17, 957 N.E.2d 572, 575 (Unified Code confers no enforceable rights on inmates); see also *People ex rel. Braver v. Washington*, 311 Ill. App. 3d 179, 186, 724 N.E.2d 68, 74 (1999) (holding inmate could not state claim for failure to receive meritorious good-conduct credits). Plaintiff has no due process interest in meritorious good-conduct credit. He has no standing to bring a claim for a purported violation of section 3-6-3 of the Unified Code.

¶ 12 Plaintiff also claims the Directors' suspension of the meritorious good-conduct credit program violates his right to equal protection of law because, prior to the suspension, many inmates were released and because "most prisoners were promised good time during their guilty plea proceedings at trial court." This argument fails because it confuses the automatic, non-

discretionary good-conduct credit for which plaintiff is eligible and the Director's discretionary meritorious good-conduct credit. Inmates have no right to receive meritorious good-conduct credit and the Director need not even consider an application for that credit (see *Braver*, 311 Ill. App. 3d at 187-89, 724 N.E.2d at 75). Thus, it could not be the basis for a decision to plead guilty. Plaintiff did not set forth a basis for the declaratory relief he requested.

¶ 13 His complaint did not state a claim for *mandamus* relief because the award of meritorious good-conduct credit is discretionary. *Mandamus* is an extraordinary remedy granted only to enforce the performance of nondiscretionary official duties. *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 22, 960 N.E.2d 1, 6. To state a claim for *mandamus*, plaintiff must allege (1) facts demonstrating a clear right to relief; (2) a clear, ministerial duty on the part of defendants to act; and (3) defendants have clear authority to comply with an order of *mandamus*. *Id.*

¶ 14 Section 3-6-3 of the Unified Code does not impose a ministerial duty on the Director to award plaintiff any meritorious good-conduct credit. It states instead, "the Director may award up to 180 days additional good conduct credit for meritorious service in specific instances as the Director deems proper[.]" 730 ILCS 5/3-6-3(a)(3) (West 2010). The Unified Code does not *require* the Director to award any meritorious good-conduct credit but *permits* the Director to award that credit if in his sole discretion he chooses to do so. See *Braver*, 311 Ill. App. 3d at 186, 187-89, 724 N.E.2d at 74, 75 ("the legislature intended the decision to award meritorious good-time credit to rest within the discretion of the [Department] Director" and "the Director of [the Department] is not required to grant the time or even consider it, absent a clear duty to act, which is not present here"). The decisions in *Braver*, 311 Ill. App. 3d at 186, 724 N.E.2d at 74, and *Helm v. Washington*, 308 Ill. App. 3d 255, 257-58, 720 N.E.2d 326, 328

(1999) rejected *mandamus* claims based on the failure to award meritorious good-conduct credit and we also affirm the trial court's dismissal of such an action.

¶ 15

III. CONCLUSION

¶ 16 We affirm the trial court's dismissal of plaintiff's complaint for declaratory and *mandamus* relief.

¶ 17 Affirmed.