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) 111136-U

Filed 6/12/12

NO. 4-11-1136

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

IGDALIAH GRAHAM-BEY,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
GINA ALLEN, Administrative Review Board, and S.A.	)	No. 11MR598
GODINEZ, Director, The Department of Corrections,	)	
Defendants-Appellees.	)	Honorable
	)	John Schmidt,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff's *pro se* petition for *mandamus* failed to assert a violation of title 20, section 504.30(f), of the Illinois Administrative Code, and if a violation did exist, the petition failed to allege any prejudice from that violation, the trial court properly dismissed plaintiff's petition *sua sponte*.

¶ 2 Plaintiff, Igdaliah Graham-Bey, an inmate with the Department of Corrections (DOC), appeals the Sangamon County circuit court's *sua sponte* dismissal of his *pro se mandamus* petition against defendants, Gina Allen with the administrative review board, and S.A. Godinez, director of DOC. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 29, 2011, plaintiff filed his petition for *mandamus*, seeking to have defendants void the findings of guilt and resulting disciplinary sanctions related to an August 25, 2010, disciplinary report. Specifically, plaintiff asserted the disciplinary report relied on

plaintiff's actions that occurred more than eight days before the disciplinary report and the related August 2, 2010, investigative report in violation of title 20, section 504.30(f), of the Administrative Code (20 Ill. Adm. Code 504.30(f) (2012)). To his *mandamus* petition, plaintiff attached the August 2, 2010, investigative report; the August 25, 2010, disciplinary report; plaintiff's November 3, 2010, grievance; and a March 1, 2011, letter from defendants denying plaintiff's grievance. The information contained in the petition and the aforementioned documents is set forth below.

¶ 5 The August 2, 2010, investigative report stated plaintiff was being placed on investigative status as of that date but did not indicate what offense plaintiff was suspected of committing. The August 25, 2010, disciplinary report stated it replaced the August 2, 2010, investigative report and asserted plaintiff committed the offenses of unauthorized organizational activity (20 Ill. Adm. Code 504 app.A (205) (2012)) and dangerous communications (20 Ill. Adm. Code 504 app.A (208) (2012)). The report noted an investigation of Black P. Stone activity at Stateville Correctional Center had taken place. During the investigation, plaintiff was identified as a member and a leader of that organization and found to be actively participating in Black P. Stone activity in the prison. The information was obtained from interviews with confidential informants and sources and also mail and telephone monitoring. According to the report, plaintiff was communicating through the inmate telephone system with his uncle, who was a higher leader in the organization, and receiving and relaying information from the Black P. Stones on the street with the members in the prison. The report listed four separate telephone calls between plaintiff and his uncle with the dates of January 19, 2010; January 31, 2010; June 1, 2010; and July 13, 2010. It also listed the dates information was obtained from confidential

sources and informants, which are as follows: June 22-23, 2010; and July 4, 6, 11, 18, and 21, 2010. Additionally, the report noted plaintiff had been issued the disciplinary report for actively engaging in Black P. Stone activity while at Stateville Correctional Center and using the inmate telephone system to gather and relay messages regarding Black P. Stone activity that could disrupt the safety and security of the facility. Last, the report declared it could not be issued until the completion of the investigation.

¶ 6 According to plaintiff's petition, the adjustment committee hearing took place on September 6, 2010, and plaintiff raised his allegation of noncompliance with section 504.30(f). On September 23, 2010, plaintiff received a report from the adjustment committee, finding him guilty of unauthorized organizational activity. The adjustment committee recommended plaintiff receive one year of C grade, one year of segregation, revocation of one year of good-time credits, and a six-month restriction on contact visits. The report was later approved by Yolande Johnson, chief administrative officer of Tamms Correctional Center.

¶ 7 In his November 3, 2010, grievance, plaintiff challenged his September 2010 adjustment committee hearing for the August 2010 disciplinary report. Plaintiff asserted the disciplinary report failed to comply with title 20, section 504.30(f), of the Administrative Code (20 Ill. Adm. Code 504.30(f) (2012)) because the last telephone call listed in the report occurred on July 13, 2010, and the last information listed in the report was received on July 21, 2010, both of which were more than eight days before the August 2, 2010, investigative report. Defendants' March 1, 2011, letter stated, in pertinent part, the following:

> "Based on a total review of all available information and a compliance check of the procedural due process safeguards out-

> lined in DR504, this office is reasonably satisfied the offender committed the offenses and recommends the grievance be denied as [plaintiff] was not detained past 30 days in Investigative status (August 3-26, 2010). In accordance with DR504.80 an offense is considered to be discovered upon the conclusion of the investigation."

¶ 8 On November 29, 2011, the trial court *sua sponte* dismissed plaintiff's *mandamus* petition, finding it lacked merit. On December 22, 2011, plaintiff filed his timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008), and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 9 II. ANALYSIS

¶ 10 Here, plaintiff challenges the trial court's *sua sponte* dismissal of his *mandamus* petition. Defendants did not receive notice of plaintiff's petition and have not participated in any of the court proceedings on the petition. In ruling on a petition without a responsive pleading, the issue is whether the allegations in the petition entitle the plaintiff to relief as a matter of law. *People v. Vincent*, 226 Ill. 2d 1, 10, 871 N.E.2d 17, 24 (2007). Exhibits attached to the petition are considered part of the petition. See *Dye v. Pierce*, 369 Ill. App. 3d 683, 686, 868 N.E.2d 293, 296 (2006). This court reviews *de novo* a trial court's *sua sponte* dismissal of an inmate's petition. *Vincent*, 226 Ill. 2d at 14, 871 N.E.2d at 26.

¶ 11 Regarding *mandamus* actions, this court has stated the following:

> " '*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. A court will not grant a writ of *mandamus* unless the petitioner can demonstrate a clear, affirmative right to relief, a clear duty of the official to act, and clear authority in the official to comply with the writ. The writ will not lie when its effect is to substitute the court's judgment or discretion for the official's judgment or discretion. *Mandamus* relief, therefore, is not appropriate to regulate a course of official conduct or to enforce the performance of official duties generally.' " *Dye*, 369 Ill. App. 3d at 686-87, 868 N.E.2d at 296 (quoting *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 739, 759 N.E.2d 585, 588 (2001)).

Moreover, "[a]n allegation of a due-process-rights violation also states a cause of action in *mandamus*." *Dye*, 369 Ill. App. 3d at 687, 868 N.E.2d at 296.

¶ 12 Plaintiff is correct DOC is bound to follow its own regulations. *People ex rel. Yoder v. Hardy*, 116 Ill. App. 3d 489, 495, 451 N.E.2d 965, 969 (1983). Title 20, section 504.30(f), of the Illinois Administrative Code (20 Ill. Adm. Code 504.30(f) (2012)) provides, in pertinent part, the following: "In no event shall a disciplinary report or investigative report be served upon an adult offender more than 8 days *** after the commission of an offense or the discovery thereof unless the offender is unavailable or unable to participate in the proceeding." Under title 20, section 504.30(e), of the Administrative Code, an investigative report may be issued when an offender is suspected of committing a disciplinary offense. 20 Ill. Adm. Code 504.30(e) (2012). In defendants' March 2011 letter, they cite title 20, section 504.80(a), of the

Administrative Code (20 Ill. Adm. Code 504.80(a) (2012)), which provides an adjustment committee hearing must be convened within 14 days after the commission of the offense or its discovery and states the following: "[f]or purposes of this Section, when an investigation has taken place, an offense is considered to be discovered upon the conclusion of the investigation."

¶ 13 While DOC must follow its own regulations, including section 504.30(f), Illinois courts have recognized the Seventh Circuit's decision in *U.S. ex rel. Houston v. Warden, Stateville Correctional Center*, 635 F.2d 656, 658-59 (1980), in which it found the failure to comply with the statutory requirements requiring the inmate receive written notice of disciplinary violations within 72 hours of its occurrence and the disciplinary proceedings commence within eight days did not constitute a due process violation. See *Clayton-El v. Lane*, 203 Ill. App. 3d 895, 900, 561 N.E.2d 183, 186-87 (1990); *Hardy*, 116 Ill. App. 3d at 494, 451 N.E.2d at 968. In *Houston*, 635 F.2d at 658-59, the inmate had not alleged he suffered any harm from the delay and did not dispute the respondents' statement that no disciplinary hearings took place at the prison for more than two months. The Seventh Circuit did recognize that, at some point a delay in informing an inmate of the charges against him or her might interfere with the right to marshal the facts and prepare a defense, but not on the facts before it. *Houston*, 635 F.2d at 659.

¶ 14 In this case, the facts in the record do not indicate exactly when DOC officials "discovered" or suspected plaintiff had committed the offenses at issue. Unlike a witnessed fight that clearly occurs on the date the fight took place, the charges against plaintiff were the result of an investigation of Black P. Stone activity in the prison. The August 2010 disciplinary report stated the report could not have been issued until the investigation was completed. While the report does not explain the reason the investigation had to be completed, many reasonable and

legitimate possibilities exist for the need to complete the investigation first, such as security. In explaining the policy underlying restrictions on prisoner *mandamus* petitions, this court has stated:

> " 'Prisoners are not afforded all of the rights and privileges guaranteed to other citizens. (*Wolff* [*v. McDonnell*], 418 U.S. [539,] 555, 41 L. Ed. 2d [935,] 950, 94 S. Ct. [2963,] 2974 [(1974)].) The rights they enjoy are flexible and subject to limitation. It is therefore necessary to balance the need for efficient and secure prisons against petitioners' rights to be protected against unwarranted losses of liberty. Prison officials must have broad discretion in structuring and operating the prison disciplinary system. A court should not meddle in prison affairs unless legitimate constitutional issues are raised that require intervention.' " *Mason v. Snyder*, 332 Ill. App. 3d 834, 839, 774 N.E.2d 457, 461 (2002) (quoting *Thompson v. Lane*, 194 Ill. App. 3d 855, 861, 551 N.E.2d 731, 735 (1990)).

The aforementioned language clearly indicates it is not our job to second guess DOC's statement it could not have issued the August 2010 disciplinary report any earlier. Accordingly, plaintiff's *mandamus* petition does not state a violation of section 504.30(f). Moreover, even if a violation of section 504.30(f) existed in this case, plaintiff has failed to allege any prejudice in presenting his case from that delay, and thus his petition also does not state a due process violation. See *Houston*, 635 F.2d at 658-59.

¶ 15 Accordingly, we find the trial court did not err by *sua sponte* dismissing plaintiff's *mandamus* petition as the petition fails to state a cause of action.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we affirm the Sangamon County circuit court's dismissal of plaintiff's *mandamus* petition.

¶ 18 Affirmed.