

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) 120074-U

NO. 4-12-0074

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 19, 2012
Carla Bender
4th District Appellate
Court, IL

ANIBAL SANTIAGO,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
MICHAEL P. RANDLE, in His Official Capacity as)	No. 09MR737
Director of The Department of Corrections,)	
Defendant-Appellee.)	Honorable
)	Leslie J. Graves,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff, an inmate at Tamms Correctional Center, did not have standing to challenge the commissary markup imposed by the Illinois Department of Corrections.

¶ 2 Plaintiff, Anibal Santiago, is an inmate at Tamms Correctional Center (Tamms).

He sought damages, declaratory and injunctive relief, and a writ of *mandamus* in the trial court to prohibit the Department of Corrections (DOC) from imposing markups on commissary goods for inmates in "C-max," the closed maximum-security portion of Tamms. According to plaintiff, Tamms has an onsite commissary for inmates in the minimum-security unit, but those in the maximum-security section are not allowed to use that commissary. Instead, the maximum-security inmates order from an online commissary handled by a private vendor.

¶ 3 Plaintiff claims DOC marks up the cost of commissary items through the private

vendor contrary to the provisions of section 3-7-2a of the Unified Code of Corrections (Unified Code). 730 ILCS 5/3-7-2a (West 2010). He also claims DOC had no authority to enter into a contract with a private vendor pursuant to the same section of the Unified Code cited above.

¶ 4 In August 2010, the trial court dismissed the claim for damages under principles of sovereign immunity. The court also granted summary judgment for defendants on the issue of DOC's authority to enter into a contract with a private vendor on the basis DOC's contract with its vendor at Tamms predated the statutory ban on private vendors, and thus, was excepted from the prohibition of the statute.

¶ 5 The trial court later dismissed the other portions of plaintiff's complaint on grounds he lacked standing pursuant to our decision in *Jackson v. Randle*, 2011 IL App (4th) 100790, 957 N.E.2d 572, which was released between the time the court granted the initial motions and heard the remaining motions.

¶ 6 This appeal followed.

¶ 7 I. ANALYSIS

¶ 8 This court reviews grants of summary judgment and dismissals *de novo*. *People ex rel. Ballard v. Niekamp*, 2011 IL App (4th) 100796 ¶ 22, 961 N.E.2d 288, 292; *Nestle USA, Inc. v. Dunlap*, 365 Ill. App. 3d 727, 731, 852 N.E.2d 282, 286 (2006).

¶ 9 Section 3-7-2a of the Unified Code states:

"If a facility maintains a commissary or commissaries serving inmates, the selling prices for all goods shall be sufficient to cover the costs of the goods and an additional charge of up to 35% for tobacco products and up to 25% for non-tobacco products. The

amount of the additional charges for goods sold at commissaries serving inmates shall be based upon the amount necessary to pay for the wages and benefits of commissary employees who are employed in any commissary facilities of the Department. The Department shall determine the additional charges upon any changes in wages and benefits of commissary employees as negotiated in the collective bargaining agreement. ***

Items purchased for sale at any such commissary shall be purchased, wherever possible, at wholesale costs. If a facility maintains a commissary or commissaries as of the effective date of this amendatory Act of the 93rd General Assembly, the Department may not contract with a private contractor or vendor to operate, manage, or perform any portion of the commissary services. The Department may not enter into such a contract for commissary services at a facility that opens subsequent to the effective date of this amendatory Act of the 93rd General Assembly." 730 ILCS 5/3-7-2a (West 2010).

¶ 10 Because we find plaintiff lacks standing to bring this action, we affirm the decision of the trial court.

¶ 11 In *Jackson*, 2011 IL App (4th) 100790, 957 N.E.2d 572, we recently held section 3-7-2a of the Unified Code does not expressly confer standing on inmates to enforce the cost percentages stated therein. *Id.* at ¶ 16, 957 N.E.2d at 575. As we further noted, DOC regulations

and the Unified Code were designed to provide guidance to prison officials in the administration of prisons, not to create more rights for inmates than those constitutionally required. *Id.* at ¶ 17, 957 N.E.2d at 575. Consequently, plaintiff, an inmate in DOC, lacks standing to challenge DOC's policies with respect to commissary markups.

¶ 12

II. CONCLUSION

¶ 13

Plaintiff lacks standing to challenge the commissary markups imposed by DOC.

¶ 14

Affirmed.