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I. BACKGROUND

¶ 4 On March 22, 2012, plaintiff filed a *pro se mandamus* petition and a petition for writ of *certiorari* seeking review of the prison disciplinary process. Specifically, plaintiff alleged, *inter alia*, his due process rights were violated because defendants failed to follow their own rules and policies during the disciplinary process and hearing before of the adjustment committee.

¶ 5 On April 11, 2012, the trial court *sua sponte* dismissed plaintiff's petition as "frivolous and without merit."

¶ 6 This appeal followed.

¶ 7

II. ANALYSIS

¶ 8 In *Powell v. Lewellyn*, 2012 IL App (4th) 110168, ¶¶ 11-12, 2012 WL 3985891, *2, this court recently vacated a *sua sponte* dismissal of a plaintiff's *pro se* petition for injunctive relief and damages finding the trial court acted prematurely. In *Powell*, just 13 days separated the plaintiff's filing of his petition and the court's *sua sponte* dismissal. Moreover, the record did not show the defendants had been served with a notice or summons. *Powell*, 2012 IL App (4th) 110168, ¶ 10, 2012 WL 3985891 at *2. This court concluded the case was not yet ripe for adjudication where the petitioner was not afforded a reasonable time to obtain service on the defendants prior to the court's dismissal. *Powell* noted, had the plaintiff effectuated service on the defendants, the defendants would not have been afforded a reasonable time to respond.

¶ 9 *Powell* relied upon the supreme court's decision in *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009), which vacated a *sua sponte* order dismissing a *pro se* prisoner's section 2-1401 petition (735 ILCS 5/2-1401 (West 2004)). *Laugharn*, 233 Ill. 2d at

323, 909 N.E.2d at 805. In *Laugharn*, the ordinary 30-day period for the defendant to answer or otherwise file a responsive pleading had not expired. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. In fact, just seven days separated the filing of the section 2-1401 petition and its dismissal. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. The *Laugharn* court found the trial court's *sua sponte* dismissal was not ripe for adjudication because the State had not been afforded time to respond. As a result, the court found the trial court's dismissal was improper. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805.

¶ 10 In this case, plaintiff filed his complaint on March 22, 2012. On April 11, 2012, the trial court *sua sponte* dismissed plaintiff's petition as "frivolous and without merit." Our review of the record does not reveal defendants were ever served with a notice or summons. Following the reasoning in *Powell* and *Laugharn*, the trial court's dismissal of plaintiff's complaint must be vacated because the case is not ripe for adjudication where defendants have not been served or issued a summons. However, if plaintiff wishes his claim to be heard, he must serve defendants. See *Powell*, 2012 IL App (4th) 110168, ¶ 14, 2012 WL 3985891 at *3. In the event plaintiff does not pursue his case, the trial court may dismiss it after a reasonable period of time for want of prosecution. See *Powell*, 2012 IL App (4th) 110168, ¶ 14, 2012 WL 3985891 at *3.

¶ 11 III. CONCLUSION

¶ 12 We vacate the trial court's judgment and remand for further proceedings consistent with this order.

¶ 13 Judgment vacated; cause remanded for further proceedings.