

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) 120472-U

NO. 4-12-0472

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
October 17, 2012  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THOMAS POWERS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
S.A. GODINEZ, Director, The Department of	)	No. 12MR322
Corrections; and ONA WELCH, Acting Chief Records	)	
Officer, The Department of Corrections,	)	Honorable
Defendants-Appellees.	)	John Schmidt,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Turner and Justice Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court erred in *sua sponte* dismissing plaintiff's *pro se* complaint for declaratory judgment and injunctive relief because the matter was not ripe for adjudication where the complaint had not been served on defendants.

¶ 2 On April 10, 2012, plaintiff, Thomas Powers, an inmate at the Danville Correctional Center, filed a *pro se* complaint for declaratory and injunctive relief against defendants, S.A. Godinez and Ona Welch, related to the calculation of his sentence. Ten days later, the trial court *sua sponte* dismissed the complaint as "frivolous and without merit." Plaintiff appeals. We vacate the court's dismissal and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On April 10, 2012, plaintiff filed a *pro se* complaint seeking declaratory and injunctive relief related to the calculation of his sentence. In his complaint, plaintiff alleged,

*inter alia*, the Illinois Department of Corrections (DOC) administrative directives require his 25-year felony sentence to be calculated based on a 360-day year. According to plaintiff's complaint, DOC erroneously calculated his sentence based on a 365-day year instead of the required 360-day year.

¶ 5 On April 20, 2012, the trial court *sua sponte* dismissed plaintiff's complaint as "frivolous and without merit."

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 On appeal, plaintiff argues the trial court erred in dismissing his complaint where DOC erroneously calculated his sentence based on a 365-day year instead of the required 360-day year.

¶ 9 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 its *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. We 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. We noted, had the plaintiff effectuated service on the defendants, the defendants would not have been afforded a reasonable time to respond.

¶ 10 *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.

¶ 11 In this case, plaintiff filed his complaint on April 10, 2012. On April 20, 2012, the trial court *sua sponte* dismissed plaintiff's complaint as "frivolous and without merit." Our review of the record does not reveal defendants were ever served with a notice or a 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.

¶ 12 III. CONCLUSION

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

¶ 14 Judgment vacated; cause remanded for further proceedings.