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2016 IL App (3d) 150361-U

Order filed November 16, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

| | | |
|----------------------|---|-------------------------------|
| STEVEN PODKULSKI, |) | Appeal from the Circuit Court |
| |) | of the 12th Judicial Circuit, |
| Plaintiff-Appellant, |) | Will County, Illinois. |
| |) | |
| v. |) | Appeal No. 3-15-0361 |
| |) | Circuit No. 14-MR-1399 |
| |) | |
| S.A. GODINEZ, |) | Honorable |
| |) | Cory D. Lund, |
| Defendant-Appellee. |) | Judge, Presiding. |

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice O'Brien and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in dismissing plaintiff's *pro se* petition where plaintiff failed to state a cause of action for *mandamus* or *habeas corpus* relief and failed to allege sufficient facts to support a claim under section 1983.

¶ 2 Plaintiff, Steven Podkulski, appeals from the trial court's dismissal of his *pro se* petition to compel defendant S.A. Godinez, former director of the Illinois Department of Corrections, to allow defendant to serve his term of mandatory supervised release (MSR) in prison and to recalculate his good conduct credit. We affirm.

¶ 3 Plaintiff was convicted of burglary and theft. He was incarcerated and began serving his three-year term of MSR on October 22, 2014. To avoid being released from prison, he filed a petition asking the circuit court to order the director of the Department of Corrections to allow him to serve his MSR term as an inmate.

¶ 4 Plaintiff's complaint raised three theories of relief. First, plaintiff asserted a *mandamus* claim. He argued that he was improperly placed on MSR status when he refused to sign the MSR agreement but was released from prison anyway. Plaintiff also sought six months of supplemental sentencing credit. He asserted that section 107.210 of the Administrative Code (20 Ill. Adm. Code 107.210 (eff. Feb. 1, 2013)), which allows the director to award up to 180 days additional sentence credit for good conduct, violated federal and state laws. Plaintiff requested an order returning him to prison or declaring that he was not required to comply with the terms of his MSR.

¶ 5 Plaintiff also raised a *habeas corpus* claim. He argued that he never agreed to the terms of MSR and that he refused to sign the MSR agreement. He requested an order releasing him from MSR and returning him to prison.

¶ 6 Last, plaintiff raised a due process claim under section 1983 of the United States Code (42 U.S.C. § 1983 (2012)), alleging that the denial of his supplemental sentence credit violated his due process rights under the fourteenth amendment. He also asked for an award of \$54,000 in compensatory and punitive damages.

¶ 7 Defendant filed a motion to dismiss, arguing that the Department had no authority to alter plaintiff's statutorily mandated MSR term, that his claim for monetary damages should be dismissed as barred by sovereign immunity, and that his demand for supplemental sentence credit was moot because he was no longer in custody.

¶ 8 On May 28, 2015, the trial court found that plaintiff failed to provide sufficient facts to state a claim for relief and entered an order dismissing the case with prejudice. Plaintiff filed a notice of appeal the next day.

¶ 9 On June 8, 2015, plaintiff filed a motion to reconsider. In the motion, he maintained that *habeas* relief was proper because he sought to be released from MSR custody, even though it would cause him to be returned to the custody of the Department. The trial court found that plaintiff's claims were without merit on *mandamus*, *habeas corpus* or section 1983 grounds and denied the motion.

¶ 10 ANALYSIS

¶ 11 Plaintiff argues that the trial court erred in dismissing his complaint under all three theories of relief. He claims that the court's order should be reversed and the cause remanded for further hearing or that the appellate court should enter an order directing defendant to revoke his MSR and recalculate his supplemental sentence credit.

¶ 12 A. *Mandamus*

¶ 13 *Mandamus* is an extraordinary remedy used to compel public officers to perform nondiscretionary official duties. *McFatridge v. Madigan*, 2013 IL 113676, ¶ 17. In order to obtain *mandamus* relief, a plaintiff must establish (1) a clear right to the requested relief, (2) a clear duty of the public officer to act, and (3) clear authority of the public officer to comply with the order. *Id.* "A writ of *mandamus* is appropriate when used to compel compliance with mandatory legal standards but not when the act in question involves the exercise of a public officer's discretion." *Id.* We review orders dismissing a petition for *mandamus* relief *de novo*. *Bocock v. O'Leary*, 2015 IL App (3d) 150096, ¶ 9.

¶ 14 The Prisoner Review Board has discretion in determining the conditions of MSR. 730 ILCS 5/3-3-7(a),(b) (West 2014)). The award of good conduct sentencing credit is also discretionary under the statute. 730 ILCS 5/3-6-3(a)(3) (West 2014). The director of the Department is not required to grant good conduct credit or even consider it. See *Mason v. Snyder*, 332 Ill. App. 3d 834, 838 (2002).

¶ 15 Plaintiff argues that the Department is required to maintain physical custody of him until he agrees to the terms of the MSR agreement or his MSR term expires. He further claims that he has a “clear right” to (1) demand return to prison because he did not sign the MSR agreement and (2) request recalculation of good conduct credit because it was miscalculated.

¶ 16 Section 3-3-7(a) of the Unified Code of Corrections (730 ICLS 5/3-3-7(a) (West 2014)) provides that the conditions of mandatory supervised release shall be such as the Prisoner Review Board deems necessary to assist the subject in leading a law-abiding life. It then sets forth mandatory conditions every person on MSR must follow. 730 ILCS 5/3-3-7(a) (West 2014). Section 3-3-7(b) provides additional conditions that the board has discretion to impose, including maintaining employment, seeking mental health treatment, or residing in a parole assistance facility. 730 ILCS 5/3-3-7(b) (West 2014). Subsection (c) then states that:

“The conditions under which the parole, aftercare release, or mandatory supervised release is to be served shall be communicated to the person in writing prior to his or her release, and he or she shall sign the same before release.” 730 ILCS 5/3-3-7(c) (West 2014).

¶ 17 Sections 3-3-7(a) and (b) establish the mandatory and discretionary provisions of the MSR term. The signed agreement referred to in section 3-3-7(c) acts as an acknowledgment by the inmate of the MSR requirements that are being imposed on him or her by operation of law.

Thus, plaintiff's refusal to sign the MSR acknowledgment does not bar the director from enforcing the conditions that were imposed by the Prisoner Review Board. Further, nothing in the statute requires the Department to continue to house an inmate if he or she refuses to sign the acknowledgment or gives an inmate the right to remain in the Department's custody during the MSR term. *Cf. In re Detention of Powell*, 217 Ill. 2d 123, 129 (2005) (Department may deny release to an inmate who refuses to sign the MSR acknowledgment).

¶ 18 As noted, a *mandamus* claim requires that a plaintiff establish a clear right to the relief requested and that defendant has a duty to act as demanded. Here, plaintiff has alleged that he refused to sign the MSR sheet acknowledging the conditions of his release. However, that allegation does not establish a "clear right" to remain in prison, or a "duty" on the part of the director to return him to custody. Moreover, the statute allowing the director to award good conduct credit at his or her discretion does not mandate supplemental sentence credit. Thus, the trial court properly dismissed plaintiff's claims seeking to be returned to prison and to have his good conduct credit recalculated because he failed to state a viable *mandamus* claim.

¶ 19 *B. Habeas Corpus*

¶ 20 A petition for writ of *habeas corpus* may only be used to review proceedings that exhibit one of the defects set forth in section 10-124 of the Code of Civil Procedure (Code) (735 ILCS 5/10-124 (West 2014)). Section 10-124 of the Code provides that a prisoner may be discharged only if (1) the court exceeds the limit of its jurisdiction, (2) by some act, omission, or event, the prisoner had become entitled to discharge, (3) the process is defective in some substantial form, or (4) the process, though in proper form, has been issued incorrectly. 735 ILCS 5/10-124 (West 2014). Under *habeas corpus*, the sole remedy is a prisoner's immediate discharge from custody. *Adcock v. Snyder*, 345 Ill. App. 3d 1095, 1097 (2004). A prisoner is not entitled to discharge

until his or her term of imprisonment has been served, including MSR. *Taylor v. Cowan*, 339 Ill. App. 3d 406, 410-11 (2003).

¶ 21 Here, plaintiff did not request immediate release from the Department’s custody. He petitioned the court seeking to be returned to prison. The statute does not provide for that remedy. Accordingly, the trial court properly dismissed plaintiff’s demand for *habeas* relief.

¶ 22 C. Section 1983

¶ 23 To succeed in an action under section 1983, two elements must be present: (1) the conduct complained of must have been committed by a person acting under color of state law; and (2) the alleged conduct deprived a person of rights, privileges, or immunities secured by the Constitution or other laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). Illinois is a fact-pleading state, meaning that a plaintiff must allege facts sufficient to bring his or her claim within the scope of the cause of action asserted. *Beahringer v. Page*, 204 Ill. 2d 363, 369 (2003).

¶ 24 The pleadings indicate that plaintiff alleged sufficient facts to meet the first element of a section 1983 claim. As to the second element, plaintiff alleged that defendant violated his fourteenth amendment rights “when [they] denied my 6 months good time for an unwritten policy and all of my reasons listed in mandamus relief.” The fourteenth amendment provides that no State shall “deprive any person of life, liberty, or property without due process of law.” U.S. Const., amend. XIV, § 1. To make a valid due process claim, plaintiff must establish (1) the existence of a protected life, liberty or property interest, (2) a deprivation of that protected interest, and (3) State action effecting the deprivation of the protected interest. *Parratt*, 451 U.S. at 536-37. Plaintiff’s allegation in this case is merely a conclusion; conclusions are insufficient to state a cause of action. See *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 519-

20 (1989). Without additional information regarding defendant's acts and how those acts violated plaintiff's due process rights, plaintiff's claim fails to state a cause of action under section 1983. We find no error in the trial court's decision to dismiss it.

¶ 25

D. Motions Taken with the Case

¶ 26

While this appeal was pending, plaintiff filed two motions to stay appeal. In his first motion, plaintiff requests a stay pending the trial court's ruling on a separate section 2-1401 petition filed in the circuit court addressing the same issues raised in this case. The second motion is an emergency motion to stay appeal in which plaintiff argues that a stay is necessary because he needs more time to obtain a copy of the unsigned MSR agreement. Both motions were taken with the case. Because the issues raised in the motions are moot, the motions are denied.

¶ 27

CONCLUSION

¶ 28

The judgment of the circuit court of Will County is affirmed.

¶ 29

Affirmed.