

NOTICE

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2017 IL App (4th) 160202-U

NO. 4-16-0202

FILED
January 13, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

ROBERT DIGGS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
JOHN R. BALDWIN, Director of the Illinois Department)	No. 15MR987
of Corrections,)	
Defendant-Appellee.)	Honorable
)	Rudolph M. Braud, Jr.,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court did not err in granting defendant's motion to dismiss plaintiff's *mandamus* petition.

¶ 2 Plaintiff, Robert Diggs, an inmate at Hill Correctional Center (Hill), appeals the trial court's dismissal of his *mandamus* petition, arguing defendant, John R. Baldwin, the director of the Department of Corrections (DOC), violated his right to day-for-day good-conduct credit by taking away three years of good-conduct credit in the form of mandatory supervised release (MSR) without a hearing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff was taken into custody on April 27, 1989. He was convicted of two Class X felonies (aggravated criminal sexual assault) and is serving a total of 80 years in DOC. Plaintiff's projected parole date is April 27, 2029, with a projected discharge date of April 27,

2032.

¶ 5 In October 2013, plaintiff filed a grievance at Hill, alleging he just discovered DOC had "taken" three years' good-conduct credit from him in the form of MSR without providing him a hearing before the adjustment committee. The counselor advised plaintiff his Class X felony status carried an "automatic [three] year MSR term" and noted he was scheduled for release on April 27, 2029, and discharge from MSR on April 27, 2032. The officer further stated this was a legal issue, not a DOC issue, making the grievance "moot." In January 2014, the counselor's response was upheld by the grievance officer, who recommended the grievance be considered "moot as this term is mandated by law." The chief administrative officer concurred in the recommendation.

¶ 6 In February 2014, plaintiff sought review from the Administrative Review Board (Board). In November 2014, the Board indicated "no further redress" because the "[a]ward of [s]upplemental [s]ervice [c]redits [(SSC)] are discretionary administrative decisions; therefore, this issue will not be addressed." The Board further stated the issue was "statutory and therefore not grievable." On January 6, 2015, plaintiff again sought review by the Board, arguing his grievance never mentioned SSCs. In a response inadvertently dated January 23, 2014 (referencing plaintiff's January 6, 2015, correspondence), the Board again rejected review of the grievance, noting, "This is statutory and therefore not grievable. The original response of [November 19, 2014,] was inadvertently marked as SSC. This is not [an] SSC issue."

¶ 7 In October 2015, plaintiff filed the *mandamus* petition which is the subject of this appeal. He asserted he was statutorily entitled to receive one day of good-conduct credit for each day he serves in prison (also known as day-for-day credit), reducing his 80-year sentence to 40 years. Plaintiff again alleged DOC had "taken" three years of good-conduct credit from him "in

the form of [MSR]." Plaintiff argued, "in order to receive the full benefit of the good[-]conduct (day-for-day) credit as required by law," his MSR should begin April 27, 2026 (not 2029), and, therefore, his discharge date should be April 27, 2029 (not 2032).

¶ 8 In January 2016, defendant filed a combined motion to dismiss and supporting memorandum pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2014)). Defendant maintained plaintiff failed to plead facts sufficient to show he was entitled to *mandamus* relief. Specifically, defendant argued (1) MSR is a statutorily imposed part of any prison sentence and was part of the sentence before plaintiff ever entered DOC; (2) plaintiff failed to show he had actually lost any good-conduct credit and, in fact, DOC's projected date for release from custody was exactly 40 years after the date he was taken into custody, showing he was receiving all the statutory good-conduct credit to which he was entitled; and (3) MSR is a separate and independent portion of plaintiff's sentence which is required by statute and unaffected by good-conduct credits.

¶ 9 After a February 29, 2016, telephone hearing, the trial court granted defendant's motion to dismiss.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiff argues the trial court erred in dismissing his complaint for *mandamus* relief. We disagree and affirm.

"A section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2012)) attacks the sufficiency of the complaint and raises the question of whether the allegations of the complaint, when viewed in the light most favorable to the nonmoving party, are sufficient to

state a cause of action upon which relief can be granted.

[Citation.] Because a motion to dismiss under section 2-615 challenges the legal sufficiency of the complaint by alleging defects on its face, we review an order ruling on the motion *de novo*. [Citation.] In ruling on a section 2-619 motion to dismiss, the trial court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party, and it should grant the motion if the plaintiff can prove no set of facts that would support a cause of action. [Citations.] We review *de novo* the dismissal of a complaint pursuant to section 2-619. [Citation.]" (Internal quotation marks removed.) *Cebertowicz v. Madigan*, 2016 IL App (4th) 140917, ¶ 14, 48 N.E.3d 702.

¶ 13 "Mandamus is an extraordinary remedy traditionally used to compel a public official to perform a ministerial duty." *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464, 804 N.E.2d 546, 552 (2004). A petition for *mandamus* will be granted " 'only if a plaintiff establishes a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ.' " *Hadley v. Montes*, 379 Ill. App. 3d 405, 407, 883 N.E.2d 703, 705 (2008) (quoting *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555, 778 N.E.2d 701, 703 (2002)). The plaintiff bears the burden of demonstrating a clear, legal right to the requested relief and must set forth every material fact necessary to prove he is entitled to a writ of *mandamus*. *Lucas v. Taylor*, 349 Ill. App. 3d 995, 998, 812 N.E.2d 72, 75 (2004). For the reasons that follow, we find the necessary *mandamus* factors are not present in this case.

¶ 14 Here, plaintiff argues three years of good-conduct credit was "taken" from him

because he must serve three years of MSR upon his release from prison. He maintains, therefore, he should be released from prison three years earlier, at which time he will serve his term of MSR. In essence, plaintiff is attempting to erroneously commingle the various mandates of how a prison sentence is to be served pursuant to statute.

¶ 15 In Illinois, every offender convicted of a felony is required by statute to serve a term of MSR following release from incarceration. *People v. Whitfield*, 217 Ill. 2d 177, 200, 840 N.E.2d 658, 672 (2005). At the time plaintiff was sentenced, the Unified Code of Corrections (Unified Code) stated as follows: "Except where a term of natural life is imposed, *every sentence shall include as though written therein a term in addition to the term of imprisonment.* *** For those sentenced on or after February 1, 1978, such term shall be identified as a[n MSR] term." (Emphasis added.) Ill. Rev. Stat. 1989, ch. 38, ¶ 1005-8-1(d). For a Class X felony, the MSR term was set at three years. *Id.*

¶ 16 The Unified Code also requires DOC to prescribe rules and regulations for the possible early release of prisoners for good conduct. The Unified Code states, other than where a sentence of natural life has been imposed, the rules and regulations "shall provide that the prisoner shall receive one day of good[-]conduct credit for each day of service in prison," which "*shall reduce by one day the inmate's period of incarceration set by the court.*" (Emphasis added.) Ill. Rev. Stat. 1989, ch. 38, ¶ 1003-6-3(a)(1), (2).

¶ 17 As stated above, the language of the Unified Code indicates MSR is "a term in addition to the term of imprisonment." Ill. Rev. Stat. 1989, ch. 38, ¶ 1005-8-1(d). While MSR is a part of an inmate's sentence (*Taylor v. Cowan*, 339 Ill. App. 3d 406, 410, 790 N.E.2d 897, 902 (2003)), it is separate and distinct from the term of imprisonment (*Faheem-El v. Klinicar*, 123 Ill. 2d 291, 298, 527 N.E.2d 307, 310 (1988)). Although an individual on MSR may be in the "legal

custody" of DOC for the duration of his release period (*Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430, 704 N.E.2d 350, 351 (1998); Ill. Rev. Stat. 1989, ch. 38, ¶ 1003-14-2(a)), the MSR term does not constitute a term of imprisonment (*People v. Jarrett*, 372 Ill. App. 3d 344, 351, 867 N.E.2d 1173, 1179 (2007) ("[y]ears of MSR and years in prison are not interchangeable"). In sum, an inmate is not to begin his term of MSR until he has served his full term of imprisonment less any credit for good conduct. Ill. Rev. Stat. 1989, ch. 38, ¶ 1003-3-3(c).

¶ 18 Here, defendant did not alter the 80-year sentence imposed by the trial court or take away any of plaintiff's good-conduct credit. Defendant correctly calculated the date for plaintiff's release from imprisonment at the 40-year mark, which appropriately took into consideration the day-for-day good-conduct credit to which plaintiff is entitled. Defendant also correctly set plaintiff's discharge date three years thereafter, which appropriately calculated the three-year MSR term plaintiff is mandated to serve after his release from imprisonment. Defendant is already complying with the statutory requirements controlling how plaintiff must serve his sentence, thereby rendering his complaint for *mandamus* relief meritless.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's order granting defendant's motion to dismiss.

¶ 21 Affirmed.