

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).

2017 IL App (4th) 160935-U

NO. 4-16-0935

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 22, 2017
Carla Bender
4th District Appellate
Court, IL

EMERIO TALAVERA,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
JOHN BALDWIN, Director of the Illinois Department)	No. 16MR637
of Corrections,)	
Defendant-Appellee.)	Honorable
)	John M. Madonia,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice DeArmond concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court committed no error by dismissing plaintiff’s complaint because plaintiff was not entitled to *mandamus* relief under any set of facts.
- ¶ 2 In July 2016, plaintiff, Emerio Talavera, filed a complaint for *mandamus* seeking to compel defendant, John Baldwin, Director of the Illinois Department of Corrections, to grant him 90 days of good-time credit. Talavera also alleged that the 2012 amendment to section 3-6-3 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3 (West 2012)) was an *ex post facto* law and that the amendment violated his rights to equal protection under the law.
- ¶ 3 In response to Baldwin’s motion to dismiss, the trial court dismissed Talavera’s complaint with prejudice under section 2-615 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-615 (West 2016)). Talavera appeals, arguing that the court erred by dismissing his claim under section 2-615 of the Civil Code. We disagree and affirm, concluding that Talavera is not entitled to *mandamus* relief under any set of facts.

¶ 4

I. BACKGROUND

¶ 5 In 1998, Talavera was convicted of first degree murder and sentenced to 40 years in prison. Talavera is currently serving his sentence at the Centralia Correctional Center.

¶ 6 In September 2015, Talavera filed a prison grievance, asserting that he was eligible for 90 days of good-conduct credit for meritorious service under section 3-6-3(a)(3) of the 1998 version of the Unified Code. 730 ILCS 5/3-6-3(a)(3) (West 1998). Talavera's request was denied.

¶ 7 In July 2016, Talavera filed a complaint in the trial court seeking *mandamus* relief. See 735 ILCS 5/14-101 to 14-109 (West 2016). Talavera argued that the 1998 version of section 3-6-3 of the Unified Code entitled him to 90 days of good-time credit. Talavera further asserted that Baldwin had a "de-facto" and "unwritten" policy of automatically granting good-time credit to every inmate on a nondiscretionary basis. Thus, Talavera sought to compel Baldwin to grant him 90 days of good-conduct credit. Talavera also alleged that the 2012 amendment to section 3-6-3 of the Unified Code was an *ex post facto* law and violated his rights to equal protection under the law. See Pub. Act 97-697 (eff. June 22, 2012); Ill. Const. 1970, art. I, § 16; U.S. Const., amend. XIV, § 1.

¶ 8 In September 2016, Baldwin filed a motion to dismiss Talavera's complaint under section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2016)). Baldwin argued that the award of sentence credit for good-conduct credit is discretionary and, therefore, *mandamus* relief is not available. Baldwin further asserted that the 2012 amendment to section 3-6-3 of the Unified Code was not an *ex post facto* law because the amendment did not increase Talavera's criminal sentence. Finally, Baldwin argued that Talavera did not plead sufficient facts to state an equal protection claim.

¶ 9 In November 2016, the trial court dismissed Talavera’s complaint with prejudice. The court denied *mandamus* relief because good-time credit “is completely discretionary within the Department of Corrections and that no set of facts can be alleged to entitle Talavera to his requested relief.”

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 A. *Mandamus* Relief

¶ 13 Talavera argues that he set forth sufficient facts that, when considered in the light most favorable to him, demonstrate that Baldwin had a “de-facto” and “unwritten” policy of automatically granting good-time credit to every inmate on a nondiscretionary basis. Thus, Talavera argues that the trial court erred by granting Baldwin’s motion to dismiss under section 2-615 of the Civil Code. 735 ILCS 5/2-615 (West 2016). We disagree.

¶ 14 1. *Mandamus Relief and the Standard of Review*

¶ 15 *Mandamus* is an extraordinary remedy used to compel a public official to perform a purely ministerial duty when no exercise of discretion is involved. *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 38, 944 N.E.2d 337, 341 (2011). A plaintiff seeking *mandamus* relief must establish that (1) he has a clear right to the relief requested, (2) there is a clear duty on the public official to act, and (3) there is clear authority in the public official to comply with the order. *Rodriguez v. Illinois Prisoner Review Bd.*, 376 Ill. App. 3d 429, 433-34, 876 N.E.2d 659, 663-64 (2007). The plaintiff must set forth in his complaint every material fact necessary to prove his clear right to relief. *Neville v. Walker*, 376 Ill. App. 3d 1115, 1118, 878 N.E.2d 831, 833 (2007).

¶ 16 A motion to dismiss under section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2016)) “challenges the legal sufficiency of a complaint based on defects apparent on its

face.” *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429, 856 N.E.2d 1048, 1053 (2006). A complaint for *mandamus* should be dismissed under section 2-615 of the Civil Code only when no set of facts can be proved entitling the plaintiff to relief. *Dumas v. Pappas*, 2014 IL App (1st) 121966, ¶ 12, 6 N.E.3d 370. When reviewing a trial court’s dismissal of a complaint under section 2-615 of the Civil Code, we accept as true all well-pleaded facts contained within the complaint and any reasonable inferences that may be drawn from those facts in the light most favorable to the plaintiff. *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 19, 960 N.E.2d 1. However, we disregard mere conclusions of law. *Id.* “We review *de novo* a trial court’s ruling under section 2-615 of the Civil Code.” *Id.*

¶ 17 2. *Applicable Prison Regulations*

¶ 18 The Unified Code provides that the Department of Corrections “shall prescribe rules and regulations for the early release on account of good conduct of persons committed to [the Department of Corrections].” 730 ILCS 5/3-6-3(a)(1) (West 1994). Section 3-6-3(a)(3) of the Unified Code provides that these “rules and regulations shall also provide that the Director *may* award up to 180 days additional good[-]conduct credit for meritorious service in specific instances as the Director deems proper[.]” (Emphasis added.) 730 ILCS 5/3-6-3(a)(3) (West 1994). However, the Director may award no more than 90 days of good-conduct credit for certain specified felonies, including first degree murder. *Id.*

¶ 19 3. *As Applied To This Case*

¶ 20 We conclude that the trial court correctly dismissed Talavera’s complaint because under no set of circumstances would he be entitled to *mandamus* relief. *Pappas*, 2014 IL App (1st) 121966, ¶ 12, 6 N.E.3d 370.

¶ 21 First, as a matter of law, Talavera does not have a clear right to the relief

requested. Section 3-6-3(a)(3) of the Unified Code states that a prisoner *may* receive good-conduct credit for “meritorious service in specific instances as the Director deems proper[.]” (Emphasis added.) 730 ILCS 5/3-6-3(a)(3) (West 1994). Based on the plain language of the statute, Talavera does not have a clear right to the relief requested.

¶ 22 Second, Baldwin does not have a clear duty to act. *Mandamus* may not be used to compel a public official to act where the duty involved is discretionary. *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 12, 72 N.E.3d 346. The award of good-conduct credit as set forth in section 3-6-3(a)(3) of the Unified Code is clearly discretionary because the statute states that the director “*may* award up to 180 days additional good[-]conduct credit for meritorious service in specific instances as the Director deems proper[.]” (Emphasis added.) 730 ILCS 5/3-6-3(a)(3) (West 1994). Thus, the Director has no affirmative duty to award credit for good conduct. *Lee v. Godinez*, 2014 IL App (3d) 130677, ¶ 18, 13 N.E.3d 214; *Helm v. Washington*, 308 Ill. App. 3d 255, 257, 720 N.E.2d 326, 328 (1999); *Brewer v. Peters*, 262 Ill. App. 3d 610, 613, 633 N.E.2d 17, 19 (1994).

¶ 23 Therefore, because Talavera does not have a clear right to the relief requested and because the Director has no clear duty to award good-conduct credit, Talavera is not entitled to *mandamus* relief under any set of facts.

¶ 24 B. Talavera’s Alternative Arguments

¶ 25 Alternatively, Talavera argues that “dismissal on the basis that requested relief is completely Discretionary Was Not Applicable in this Case [because] Substantial Violations to [the] Illinois and Federal Constitution[,] *** [the] Equal Protection [clause], And [the] Ex Post Facto [clause] *** [occurred] to Talavera.” We disagree.

¶ 26 A plaintiff seeking *mandamus* relief must establish that (1) he has a clear right to

the relief requested, (2) there is a clear duty on the public official to act, and (3) there is clear authority in the public official to comply with the order. *Rodriguez*, 376 Ill. App. 3d at 433-34, 876 N.E.2d at 663-64.

¶ 27 Talavera's alternative arguments, even when considered in the light most favorable to the plaintiff, do not establish that he is entitled to the relief requested or that Baldwin had a clear duty to act. Further, Talavera fails to cite any case allowing for the requirements of *mandamus* to be relaxed when alleged constitutional violations occur.

Accordingly, we conclude that Talavera's alternative arguments are completely without merit.

¶ 28 III. CONCLUSION

¶ 29 For the forgoing reasons, we affirm the trial court's judgment.

¶ 30 Affirmed.