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2018 IL App (3d) 160745-U

Order filed April 26, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

WILLIAM BROWN,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Plaintiff-Appellant,)	Fulton County, Illinois,
)	
v.)	Appeal No. 3-16-0745
)	Circuit No. 16-MR-74
DIRECTOR OF THE ILLINOIS)	
DEPARTMENT OF CORRECTIONS,)	Honorable
)	Bruce C. Beal,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Carter and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court erred when it *sua sponte* summarily dismissed the plaintiff's *mandamus* petition because the circuit clerk never issued a summons.
- ¶ 2 The plaintiff, William Brown, an inmate at the Illinois River Correctional Center, filed a *pro se mandamus* petition against the defendant, the Director of the Illinois Department of Corrections. The plaintiff alleged that the defendant wrongfully denied him earned good-conduct credit for his participation in programs, working, and obtaining his GED. The trial court *sua sponte* summarily dismissed the petition as frivolous and without merit. The plaintiff appeals.

¶ 3

FACTS

¶ 4

On June 16, 2016, the plaintiff filed a *pro se mandamus* petition (735 ILCS 5/14-101 *et seq.* (West 2016)). The plaintiff stated that he was serving a term of 50 years' imprisonment for the offenses of first degree murder, attempted murder, and aggravated discharge of a firearm. He argued that he earned good-conduct credit pursuant to sections 3-6-3(a)(4) and 3-6-3(a)(4.1) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3(a)(4), (4.1) (West 2016)) for: (1) working at the Illinois Correctional Industry Bakery from January 7, 2007, to November 25, 2015; (2) participating in the Each-One Reach-One program; and (3) obtaining his GED while incarcerated. The plaintiff alleged that the defendant refused to grant him the earned credit.

On November 18, 2016, the trial court issued a written order wherein it *sua sponte* summarily dismissed the plaintiff's *mandamus* petition, finding that it was frivolous and without merit. The court found that the defendant had neither a clear duty to act nor authority to act because the plaintiff was serving a term of imprisonment for first degree murder. The court explained that section 3-6-3(a)(2)(i) of the Unified Code provided that a prisoner serving a term of imprisonment for first degree murder "shall receive no sentence credit and shall serve the entire sentence imposed by the court." 730 ILCS 5/3-6-3(a)(2)(i) (West 2016). We note that the court dismissed this petition before the circuit clerk issued a summons.

¶ 5

The plaintiff appeals.

¶ 6

ANALYSIS

¶ 7

On appeal, the plaintiff contends that the trial court erred when it dismissed his petition because he was convicted of a first degree murder that occurred on June 21, 1996, and section 3-6-3(a)(2) of the Unified Code provides that a prisoner is ineligible for good-conduct credit if he is serving a term of imprisonment for a first degree murder that occurred on or after June 19,

1998. The Office of the Attorney General mailed a letter to this court stating that it received materials relating to this appeal, but it would not be filing an appellee brief because it had no record of representing any party in this case and was never served. Since this case presents an issue that can be easily decided without the aid of an appellee’s brief, we will address the matter. *First National Bank of Ottawa v. Dillinger*, 386 Ill. App. 3d 393, 395 (2008).

¶ 8 “*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. Glasgow v. Kinney*, 2012 IL 113197, ¶ 7. A plaintiff seeking *mandamus* relief must establish that (1) he has a clear right to the relief requested, (2) the public official has a clear duty to act, and (3) the public official has clear authority to comply with the order. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433-34 (2007).

¶ 9 The Code of Civil Procedure provides a clear procedural framework that must be followed when a *mandamus* petition is filed. See 735 ILCS 5/14-101 *et seq.* (West 2016). For instance, upon the filing of a *mandamus* petition, “the clerk of the court shall issue a summons.” 735 ILCS 5/14-102 (West 2016). This court has previously held that this statutory framework does not provide for summary dismissal of a *mandamus* petition prior to the issuance of a summons—even if the trial court finds that the petition lacks merit. *Carroll v. Akpore*, 2014 IL App (3d) 130731, ¶¶ 3-4. However, if the relief sought in the *mandamus* petition could have been sought in a postconviction petition, the trial court could properly consider the petition under the postconviction framework and dismiss it as frivolous and patently without merit. *Id.* ¶ 3.

¶ 10 In this case, the record shows that the circuit clerk never issued a summons. Additionally, the relief sought by the plaintiff was to require the defendant to comply with the statute relating to good-conduct credit. This relief is clearly not an issue that could be addressed in a

postconviction petition. See *People v. Pearson*, 216 Ill. 2d 58, 66 (2005) (a trial court may treat a *pro se* pleading as a postconviction petition when the pleading alleges a deprivation of constitutional rights cognizable under the Post-Conviction Hearing Act). Accordingly, the trial court erred when it dismissed the plaintiff's *mandamus* petition without the issuance of a summons and treated it as a postconviction petition. Thus, this cause must be remanded to allow the matter to proceed. See *Carroll*, 2014 IL App (3d) 130731, ¶ 4.

¶ 11

CONCLUSION

¶ 12

The judgment of the circuit court of Fulton County is reversed, and the cause is remanded for service of the petition upon the defendant.

¶ 13

Reversed and remanded.