

**NOTICE**

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2018 IL App (4th) 170025-U

NO. 4-17-0025

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

April 10, 2018

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

BERNARD COOPER,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
JOHN BALDWIN, CRAIG FINDLEY, and	)	No. 16MR630
JACQUELINE LASHBROOK,	)	
Defendants-Appellees.	)	Honorable
	)	Rudolph M. Braud, Jr.,
	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Knecht and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court properly dismissed plaintiff's complaint for *mandamus* relief for failing to state a claim upon which relief could be granted.

¶ 2 In July 2016, plaintiff, Bernard Cooper, filed a complaint for *mandamus* relief. In September 2016, defendants John Baldwin, Craig Findley, and Jacqueline Lashbrook—various Department of Corrections (DOC) officials—filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2016)). In December 2016, the trial court granted defendants' motion and dismissed plaintiff's complaint.

¶ 3 Plaintiff appeals, arguing (1) he was improperly denied good-time credit and a six-month reduction of his period of confinement following his parole violation pursuant to section 3-3-10 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-3-10 (West 2016)); (2) the Prisoner Review Board (Board) improperly required him to attend domestic

violence counseling as a condition of his parole; and (3) his term of parole should have been terminated in 2012.

¶ 4

## I. BACKGROUND

¶ 5

Plaintiff is an inmate in DOC custody following his 1976 convictions for murder, aggravated kidnapping, and armed robbery. Plaintiff received an indeterminate sentence of 100 to 200 years' imprisonment, with a projected discharge date of December 25, 2072. In 2009, plaintiff was released on parole. In August 2014, plaintiff was arrested and charged with unlawful use of a weapon by a felon. In March 2015, following a bench trial, defendant was found not guilty. Thus, on April 16, 2015, plaintiff was found not to have violated his parole, and he was released to parole. On April 24, 2015, a warrant for plaintiff's arrest was issued for violating the terms of his parole. On November 13, 2015, plaintiff was arrested and returned to DOC custody.

¶ 6

In March 2016, the Board issued an order that declared plaintiff a violator as of April 22, 2015. The order found plaintiff left Illinois and was absent without leave for approximately seven months, in violation of the conditions of his parole. The order continued plaintiff's parole, effective November 13, 2017, and plaintiff was to remain in custody until that date. In addition to the general rules applicable to parolees, the order imposed certain other special conditions, including domestic-violence counseling, anger-management counseling, electronic monitoring, and no contact with any family member of the victim in the 1976 case.

¶ 7

In April 2016, plaintiff filed a grievance requesting his release date be recalculated and reduced from November 13, 2017, to April 22, 2016. In his grievance, plaintiff claimed section 3-6-3 of the Unified Code (730 ILCS 5/3-6-3 (West 2016)) entitled him to have the period of his confinement from his November 2015 arrest to his November 2017 release date

credited with day-for-day good conduct credit, thus reducing that period by one year. The grievance also claimed section 3-3-9 of the Unified Code (730 ILCS 5/3-3-9 (West 2016)) entitled him to credit for the time he served on parole from the date his parole arrest warrant was issued to the date he was arrested because the Board did not revoke his parole. According to plaintiff's complaint, he received no response to his grievance.

¶ 8 In July 2016, plaintiff filed a complaint for *mandamus* relief against the director of DOC (Baldwin), the Chairman of the Board (Findley), and the warden of the Pinckneyville Correctional Center (Lashbrook). The complaint sought to compel defendants to calculate his parole release date as April 22, 2016, and to vacate the Board's special conditions on the terms of his parole. According to the complaint, section 3-3-2.1 of the Unified Code (730 ILCS 5/3-3-2.1 (West 2016)) entitled plaintiff to have his period of incarceration following his violation of his parole conditions reduced by one year by crediting that period with day-for-day good-conduct credit pursuant to section 3-6-3 of the Unified Code (730 ILCS 5/3-6-3 (West 2016)). The complaint further alleged section 3-3-9(b) of the Unified Code (730 ILCS 5/3-3-9(b) (West 2016)) entitled plaintiff to credit for time served on parole following the issuance of the parole arrest warrant in April 2015 to the time of his arrest in November 2015. Plaintiff argued section 3-3-10 (730 ILCS 5/3-3-10 (West 2016)) provided for his release six months prior to the expiration of the term of his incarceration following his violation of parole conditions.

¶ 9 The complaint also alleged plaintiff's mandatory supervised release should have terminated on June 29, 2014, five years after his 2009 release from prison. In support of this argument, plaintiff relied on section 5-8-1 of the Unified Code (730 ILCS 5/5-8-1 (West 2016)), which, according to the complaint, provided for a three-year term of mandatory supervised release. Because his period of supervised release had expired, the complaint argued plaintiff was

illegally held in custody. Finally, plaintiff claimed the special conditions imposed by the Board that he have no contact with the family of the victim in the 1976 case and that he attend domestic-violence counseling were arbitrary because he was not charged with domestic violence in 1976 and he had not been convicted of a domestic-violence offense.

¶ 10 In September 2016, defendants filed a motion to dismiss under section 2-619.1 (735 ILCS 5/2-619.1 (West 2016)). Under section 2-615 (735 ILCS 5/2-615 (West 2016)), defendants argued the complaint failed to state a claim for *mandamus* relief. In support of the motion, defendants attached the affidavit of Ken Tupy, a member of the Board. Tupy's affidavit stated plaintiff was serving an indeterminate sentence with a projected parole date of December 23, 2072, and a projected discharge date of December 25, 2072. At the time of his parole violation hearing, plaintiff was represented by counsel and agreed to the term of confinement and the other terms of his parole instead of facing full revocation of his parole, which was within the power of the Board. The Board determined he violated the terms of his parole and set his parole continuation date (when he would be released from DOC custody to resume his parole) for November 13, 2017. According to the affidavit, the parole continuation date was "not a parole release date to the extent it would terminate [p]laintiff's parole on that date; it is the point in time [he] would be permitted to resume his parole outside Pinckneyville Correctional Center." Finally, the affidavit stated that good-conduct credit did not apply to the term of confinement following plaintiff's parole violation, and such reductions in sentence only applied to the projected discharge date.

¶ 11 In December 2016, the trial court granted defendants' motion and dismissed plaintiff's complaint.

¶ 12 This appeal followed.

¶ 13

## II. ANALYSIS

¶ 14 On appeal, plaintiff argues the trial court erred by dismissing his petition for *mandamus* relief because he pleaded sufficient facts to state a cause of action. Specifically, plaintiff contends (1) he was improperly denied good-time credit and a six-month reduction of his period of confinement following his parole violation pursuant to section 3-3-10 of the Unified Code (730 ILCS 5/3-3-10 (West 2016)); (2) the Board improperly required him to attend domestic-violence counseling as a condition of his parole; and (3) his term of parole should have been terminated in 2012.

¶ 15

### A. Standard of Review

¶ 16 Section 2-619.1 of the Code of Civil Procedure allows for a combined motion to dismiss under sections 2-615 and 2-619. 735 ILCS 5/2-619.1 (West 2016). Section 2-615 gives the trial court the authority to dismiss a complaint where the pleadings show the plaintiff can prove no set of facts that would entitle him to relief. 735 ILCS 5/2-615 (West 2016); *Beahringer v. Page*, 204 Ill. 2d 363, 369, 789 N.E.2d 1216, 1221 (2003). Dismissal is proper if the allegations of the complaint, viewed in a light most favorable to the plaintiff, are insufficient to state a cause of action upon which relief can be granted. *Id.* Illinois is a fact-pleading jurisdiction and a plaintiff must plead sufficient facts to bring the claim within the scope of the cause of action asserted. *Id.* We review dismissal pursuant to section 2-615 *de novo*. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7, 960 N.E.2d 18.

¶ 17 *Mandamus* is an extraordinary remedy used to enforce the performance of official duties by a public official where no exercise of discretion exists. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229, 710 N.E.2d 798, 813 (1999). "A writ of *mandamus* will not be granted unless the plaintiff can show a clear, affirmative right to relief, a clear duty of the defendant to act, and

clear authority in the defendant to comply with the writ." *Id.* "*Mandamus* may be used to compel a public officer to perform a duty that does not involve the exercise of discretion by the officer [citation], but *mandamus* will not issue to direct the manner in which a discretionary act is performed [citation], even if the judgment or discretion has been erroneously exercised." *Turner-el v. West*, 349 Ill. App. 3d 475, 479-80, 811 N.E.2d 728, 733 (2004).

¶ 18 B. Plaintiff's Term of Parole

¶ 19 We begin by addressing plaintiff's final contention, because there appears to be some confusion as to how his term of parole operates. In his final argument, plaintiff asserts his parole should have terminated in 2012, because he was released from prison on parole in 2009 and section 5-8-1 of the Unified Code provides for three-year term of mandatory supervised release.

¶ 20 Plaintiff's reliance on section 5-8-1 of the Unified Code is misplaced. That section applies to determinate sentences and the terms of mandatory supervised release associated with various crimes. Plaintiff, however, was convicted in 1976, prior to Illinois moving to the determinate-sentence scheme. Thus, this section does not apply and plaintiff is not entitled to relief.

¶ 21 Moreover, plaintiff was sentenced to an indeterminate sentence of 100 to 200 years. Under the prior parole system, plaintiff could apply for parole once he became eligible and appear before the Board. As plaintiff represented in his complaint, he first appeared before the Board in 1990 and his request for release on parole was denied every year until his release in 2009. Once plaintiff was released on parole, he was still technically in the custody of DOC. "[I]n a legal sense, parole does not diminish a judicially imposed sentence or in any way affect it. [Citations.] A person on parole remains subject to the sentence of commitment to [DOC] for the

period of time specified by the court. Parole alters only the method and degree of confinement during the period of commitment." *People v. Williams*, 66 Ill. 2d 179, 187, 361 N.E.2d 1110, 1114 (1977). The record demonstrates plaintiff's estimated discharge date is December 25, 2072, which is the estimated date when plaintiff will no longer be subject to the custody of DOC. Even though he may be released on parole and will not be physically in DOC custody, he will be subject to any conditions imposed by DOC until his discharge date. *Faheem-El v. Klinicar*, 123 Ill. 2d 291, 299, 527 N.E.2d 307, 310 (1988) ("[T]he term of imprisonment is the amount of time a prisoner is subject to serve, not the amount of time actually spent imprisoned before parole.").

¶ 22 Section 5-8-1 applies to separate terms of mandatory supervised release that are imposed *in addition* to a term of imprisonment. Accordingly, it does not apply to plaintiff's claim, because his parole remains part of his term of imprisonment and does not terminate until his maximum term of 200 years' imprisonment expires. We conclude plaintiff has failed to plead facts to state a claim that his parole should have been terminated in 2012 and affirm the trial court's dismissal of this claim.

¶ 23 C. Sentence Reduction

¶ 24 Plaintiff contends he was improperly denied good-time credit and a six-month reduction of his period of confinement following his parole violation pursuant to section 3-3-10 of the Unified Code (730 ILCS 5/3-3-10 (West 2016)). Specifically, plaintiff asserts the parole continuation date of November 13, 2017, was actually a fixed release date under section 3-3-2.1 of the Unified Code, which entitled him to day-for-day good conduct credit pursuant to section 3-6-3. 730 ILCS 5/3-3-2.1, 3-6-3 (West 2016). Plaintiff further asserts he was entitled to further sentence credit for the time between his arrest for an alleged violation of the conditions of parole and the time the Board issued its order pursuant to section 3-3-9(b). 730 ILCS 5/3-3-9(b) (West

2016). Finally, Plaintiff asserts he should have been released from prison six months before his parole release date pursuant to section 3-3-10. 730 ILCS 5/3-3-10(b)(2) (West 2016).

¶ 25

1. *Sections 3-3-2.1 and 3-6-3*

¶ 26

Section 3-3-2.1(a) requires the Board to set a fixed release date for prisoners sentenced under the law in effect prior to amendments made in 1977. 730 ILCS 5/3-3-2.1(a) (West 2016). However, section 3-3-2.1(b) provides, "No release date under this [s]ection shall be set for any person sentenced to an indeterminate sentence under the law in effect prior to the effective date of this amendatory Act of 1977 in which the minimum term of such sentence is 20 years or more." 730 ILCS 5/3-3-2.1(b) (West 2016). Section 3-3-2.1(f) allows prisoners eligible to receive a fixed release date to accumulate good-conduct credit pursuant to section 3-6-3. 730 ILCS 5/3-3-2.1(f) (West 2016). As discussed above, plaintiff was sentenced to an indeterminate sentence of 100 to 200 years. Accordingly, section 3-3-2.1(b) expressly prohibits the Board from setting a fixed release date for plaintiff. See *People ex rel. Stringer v. Illinois Prisoner Review Board*, 163 Ill. App. 3d 1100, 1102, 517 N.E.2d 283, 284 (1987). Because plaintiff was not eligible to receive a fixed release date under section 3-3-2.1(b), he remained sentenced to an indeterminate term of 100 to 200 years. 730 ILCS 5/3-3-2.1(b), 3-6-3 (West 2016).

Accordingly, plaintiff has failed to demonstrate a clear right to relief under section 3-3-2.1.

*Lewis E.*, 186 Ill. 2d at 229.

¶ 27

Moreover, as defendants point out, sentence credit for time served with good conduct as provided for in section 3-6-3 does not affect the parole release date of November 13, 2017, set by the Board. Instead, sentence credit applies to the minimum and maximum terms of plaintiff's indeterminate sentence. Prior to February 1, 1978, Illinois used a system of indeterminate sentences where a person incarcerated for committing a felony was sentenced to a



minimum and maximum term of imprisonment. *Johnson v. Franzen*, 77 Ill. 2d 513, 516, 397 N.E.2d 825, 826 (1979). The minimum term governed an inmate's eligibility for parole and the maximum term governed the date beyond which an inmate could no longer be imprisoned. *Cf.*, *id.* ("Good conduct credits were applied to the minimum term to advance the date of parole eligibility and to the maximum to advance the date beyond which a prisoner could not be incarcerated."). DOC was required to prescribe, at a rate within its discretion, a schedule of "statutory good time credits" for good behavior. *Id.* DOC was also authorized to award "compensatory good time credits" for prisoners who worked or participated in other programs. *Id.*

¶ 28 Effective February 1, 1978, the Unified Code was amended and "replaced in some instances the indeterminate sentencing system with a fixed or determinate sentencing system." *Id.* The amendment eliminated DOC authority to award (1) compensatory good-conduct credits and (2) statutory good-time credits at a discretionary rate. *Id.* Following the amendment, section 3-6-3 of the Unified Code provided for good-conduct credit on a day-for-day basis. *Id.* The day-for-day credits applied to offenders (1) sentenced after the effective date of the amendment and (2) sentenced before the effective date for time served after that date. *Id.* at 518. For an inmate serving an indeterminate sentence, "[t]he credits are to be applied to the minimum and maximum terms." *Id.* at 522.

¶ 29 Regardless of whether plaintiff is entitled to credit under the system before February 1, 1978, or under the system in effect after that date, any sentence credit is applied to the minimum and maximum terms of his indeterminate sentence of 100 to 200 years. *Id.* at 516, 522. Therefore, any credit plaintiff is entitled to would be applied to the minimum term (to advance the date of parole eligibility) and the maximum term (to advance the date beyond which

he could not be incarcerated). *Id.* at 516. We conclude any good-conduct credit plaintiff is entitled to would not affect the parole release date set by the Board following his 2015 arrest for a parole violation.

¶ 30 Based on the foregoing, we conclude plaintiff has failed to state any facts showing he had a clear right to relief under section 3-3-2.1 or section 3-6-3 to have his parole release date advanced based on good-conduct sentence credit.

¶ 31 *2. Section 3-3-9*

¶ 32 Plaintiff also claimed he was entitled to have his parole release date of November 13, 2017, advanced by 6 months and 21 days based on section 3-3-9(b) of the Unified Code. 730 ILCS 5/3-3-9(b) (West 2016).

¶ 33 Section 3-3-9(b) provides, in pertinent part, "The issuance of a warrant of arrest for an alleged violation of the conditions of parole or mandatory supervised release shall toll the running of the term until the final determination of the charge. When parole or mandatory supervised release is not revoked that period shall be credited to the term, unless a community-based sanction is imposed as an alternative to revocation and reincarceration." 730 ILCS 5/3-3-9(b) (West 2016). By its plain terms, any credit due for this time period is credited to the term of parole. As discussed above, plaintiff's term of parole remains part of his term of imprisonment and does not terminate until his maximum term of 200 years' imprisonment expires. Therefore, any credit due for this time period is credited to the maximum term of plaintiff's sentence (estimated to be discharged on December 25, 2072) and not to the two-year period of incarceration from November 2015 to November 2017. Accordingly, plaintiff has failed to plead facts showing a clear right to relief under section 3-3-9 of the Unified Code. We affirm the judgment of the trial court.

¶ 34

*3. Section 3-3-10*

¶ 35 Plaintiff further argued he was entitled to be released six months prior to his parole release date of November 13, 2017, based on section 3-3-10 of the Unified Code. 730 ILCS 5/3-3-10(b) (West 2016).

¶ 36 Section 3-3-10(b) provides, in part, that if the Board sets no earlier release date after revoking a person's parole, "Any person who has violated the conditions of his or her parole and been reconfined under Section 3-3-9 shall be released under supervision 6 months prior to the expiration of the term of his or her reconfinement under paragraph (a) of Section 3-3-9 less good time credit under Section 3-6-3." 730 ILCS 5/3-3-10(b)(2) (West 2016).

¶ 37 As defendants point out, the Board here did not revoke plaintiff's parole. Instead, the Board continued plaintiff's parole and set a release date of November 13, 2017. Because plaintiff's parole was not revoked and he was not reconfined pursuant to section 3-3-9(a)(3), the provisions of section 3-3-10 do not apply. And, even if section 3-3-10 applied, plaintiff has failed to allege any facts that would entitle him to be released six months before the November 2017 continued parole release date where the estimated expiration of his term was December 25, 2072. Accordingly, plaintiff failed to show any clear right to relief under this section of the Unified Code.

¶ 38

*C. Parole Conditions*

¶ 39 Next, plaintiff argues the Board improperly required him to attend domestic-violence counseling as a condition of his parole.

¶ 40 The Unified Code provides the conditions of parole shall be such as the Board deems necessary to assist the subject in leading a law-abiding life. 730 ILCS 5/3-3-7(a) (West 2016)). The Unified Code further authorizes the Board to continue an existing term of parole

following a violation "with or without modifying or enlarging the conditions." 730 ILCS 5/3-3-9(a)(1) (West 2016). The supreme court has recognized the Board's broad discretionary authority to set the conditions of parole, "restricted only by constitutional constraints." *Holly v. Montes*, 231 Ill. 2d 153, 160, 896 N.E.2d 267, 273 (2008). This broad discretionary authority precludes the use of *mandamus* relief to compel the Board to remove the domestic-violence counseling condition of plaintiff's continued parole. See *Hadley v. Ryan*, 345 Ill. App. 3d 297, 301, 803 N.E.2d 48, 52 (2003).

¶ 41 In his complaint, plaintiff contended the imposition of this condition on his parole was merely to "punatively punish" him for being acquitted of a domestic-violence related charge of unlawful use of a firearm. The only constitutional claim plaintiff raised was to argue the imposition of this condition on his parole denied him due process because his parole violation was for leaving the state without notifying his "parole agent." We find this claim unpersuasive. The affidavit attached to defendants' motion to dismiss indicated plaintiff was represented by counsel at the hearing regarding his parole violation and he agreed to continue his parole with the additional conditions instead of facing full revocation of his parole. Accordingly, we decline to address plaintiff's claim regarding the special conditions imposed on his parole. See *Board of Education of Valley View Community Unit School District 365-U v. Illinois State Board of Education*, 2013 IL App (3d) 120373, ¶ 44, 1 N.E.3d 905 (The rule of invited error "prohibits a party from acquiescing to proceed in one manner and then contending on appeal that the requested action was error.").

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm the trial court's judgment.

¶ 44 Affirmed.