

NOTICE  
Decision filed 11/28/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 180045-U

NO. 5-18-0045

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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DALEDREK CARPENTER SR.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Montgomery County.
	)	
v.	)	No. 17-MR-26
	)	
CECIL POLLEY, Warden,	)	Honorable
	)	Douglas L. Jarman,
Defendant-Appellee.	)	Judge, presiding.

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PRESIDING JUSTICE BARBERIS delivered the judgment of the court. Justices Welch and Overstreet concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly dismissed the plaintiff's complaint for *mandamus*.

¶ 2 The plaintiff, Daledrek Carpenter Sr., appeals *pro se* the dismissal of his complaint for *mandamus* relief wherein he alleged that his sentence was incorrectly calculated, resulting in an inappropriately long sentence. We affirm.

¶ 3 **BACKGROUND**

¶ 4 Plaintiff is currently an inmate in the Illinois Department of Corrections (DOC) held in Jacksonville Correctional Center in Jacksonville, Illinois. Following a 1994 jury trial, he was found guilty of first degree murder and sentenced to 52 years' imprisonment.

Plaintiff's sentence included a statutory three-year mandatory supervised release (MSR) period. 730 ILCS 5/5-8-1(d) (West 2002).

¶ 5 In May of 2015, plaintiff filed a grievance with the Administrative Review Board, asking that his sentence be recalculated. He argued that with day-for-day credit his total time in DOC custody should be 26 years in total, and that his 3-year MSR is included within that 26, such that at the end of 23 years' incarceration, he should be released to then serve his 3-year MSR. He asserted that adding the MSR on to the end of his sentence was erroneous. His grievance was denied.

¶ 6 Plaintiff then filed a petition for *mandamus* relief seeking recalculation of his sentence. He alleged that at the time of sentencing, he was not informed that he would be required to serve an MSR term upon his release from prison. The defendant responded with a motion to dismiss the action based upon section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2016)), arguing that plaintiff failed to state a cause of action and that his sentence had been correctly calculated. The circuit court dismissed the plaintiff's petition, finding that he failed to state a claim for which relief could be granted. *Id.* § 2-615. The plaintiff now appeals.

¶ 7 ANALYSIS

¶ 8 On appeal, the plaintiff argues the circuit court erred in dismissing his complaint for *mandamus* and that the defendant should be compelled to include his MSR within his 52-year sentence. We do not agree.

¶ 9 We begin by noting our standard of review. "The grant of a motion to dismiss for a failure to state a cause of action filed pursuant to section 2-615 or a motion for an

involuntary dismissal based on defects or defenses in the pleadings pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2004)) is subject to *de novo* review." *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433, 876 N.E.2d 659, 663 (2007) (citing *White v. DaimlerChrysler Corp.*, 368 Ill. App. 3d 278, 282, 856 N.E.2d 542, 546 (2006)). "Where the dismissal was proper as a matter of law, we may affirm the circuit court's decision on any basis appearing in the record." *Id.* (citing *MKL Pre-Press Electronics/MKL Computer Media Supplies, Inc. v. La Crosse Litho Supply, LLC*, 361 Ill. App. 3d 872, 877, 840 N.E.2d 687, 691 (2005)).

¶ 10 Further, questions of statutory construction are reviewed *de novo*. *Morawicz v. Hynes*, 401 Ill. App. 3d 142, 148, 929 N.E.2d 544, 549 (2010). When construing a statute, a reviewing court seeks to give effect to the intent of the legislature, and the best indicator of the intent of the legislature is the language of the statute. *In re Marriage of Rosenbaum-Golden*, 381 Ill. App. 3d 65, 72, 884 N.E.2d 1272, 1280 (2008). Where language is clear and unambiguous, the court must give effect to the statute as it is written, without adding any exceptions, limitations, or conditions. *Id.* at 72-73.

¶ 11 "*Mandamus* is an extraordinary civil remedy that will be granted to enforce, as a matter of right, the performance of official nondiscretionary duties by a public officer." *Rodriguez*, 376 Ill. App. 3d at 433 (citing *Lee v. Findley*, 359 Ill. App. 3d 1130, 1133, 835 N.E.2d 985, 987 (2005)). "A *mandamus* action is not an appropriate means for seeking judicial review of an administrative proceeding." *Id.* (citing *Newsome v. Illinois Prison Review Board*, 333 Ill. App. 3d 917, 920, 776 N.E.2d 325, 327 (2002)). "*Mandamus* will issue only where the plaintiff has fulfilled his burden (see *Mason v.*

*Snyder*, 332 Ill. App. 3d 834, 840, 774 N.E.2d 457, 461 (2002)) to set forth *every* material fact needed to demonstrate that (1) he has a clear right to the relief requested, (2) there is a clear duty on the part of the defendant to act, and (3) clear authority exists in the defendant to comply with an order granting *mandamus* relief." (Emphasis in original.) *Id.* at 433-34 (citing *Baldacchino v. Thompson*, 289 Ill. App. 3d 104, 109, 682 N.E.2d 182, 186 (1997)). "Because Illinois is a fact-pleading jurisdiction, a plaintiff is required to set forth a legally recognized claim and plead facts in support of each element that bring the claim within the cause of action alleged." *Id.* at 434 (citing *Beahringer v. Page*, 204 Ill. 2d 363, 369, 789 N.E.2d 1216, 1221 (2003)). "To survive a motion to dismiss for the failure to state a cause of action, a complaint must be both legally and factually sufficient." *Id.*

¶ 12 The gist of the plaintiff's argument is that his sentence should be calculated as follows: (1) 52-year sentence reduced by 50% by day-for-day credit, leaving 26 years; (2) 26 years should be decreased by the 3-year MSR time which should be included within the 26 years; (3) meaning, plaintiff should be serving 23 years of incarceration inside the DOC, followed by 3 years of MSR outside the DOC, for a total of 26 years.

¶ 13 Section 5-8-1(d) of the Unified Code of Corrections (Code) provides that "[e]xcept 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 mandatory supervised release term." (Emphasis added.) 730 ILCS 5/5-8-1(d) (West 2000) (now see 730 ILCS 5/5-4.5-15(c) (West 2016)). Section 3-3-3(c) of the Code provides that a convicted person "shall

serve the full term of a determinate sentence less time credit for good behavior and shall then be released under the mandatory release provisions of paragraph (d) of Section 5-8-1 of this Code." *Id.* § 3-3-3(c).

¶ 14 The plain language of the statutes above demonstrates that a felony sentence consists of a term of imprisonment *and* then a period of MSR, which begins when the convicted person completes his or her determinate sentence and is released from the penitentiary. See *People v. Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658 (2005); *Round v. Lamb*, 2017 IL 122271, 90 N.E.3d 432; *Owens v. Snyder*, 349 Ill. App. 3d 35, 45, 811 N.E.2d 738, 746 (2004). Further, "[t]erms of mandatory supervised release are imposed by statute 'in addition' to imprisonment and cannot be stricken by the courts. See *People v. Russell*, 345 Ill. App. 3d 16, 22, 801 N.E.2d 977 (2003), citing 730 ILCS 5/5-8-1(d) (West 1998)." *Owens*, 349 Ill. App. 3d at 45.

¶ 15 "Defendant will not begin his MSR term until he has completed his prison term (730 ILCS 5/3-3-8 (West 1998)), whenever that occurs. Defendant's sentence is not discharged until he has completed his MSR term (730 ILCS 5/3-3-3 (West 1998)). See also *Faheem-El v. Klinicar*, 123 Ill. 2d 291, 299, 527 N.E.2d 307, 310-11 (1988) (holding prisoner is subject to custody of the [DOC] for the remainder of maximum term of imprisonment and three-year MSR term)." *People v. Lee*, 2012 IL App (4th) 110403, ¶ 33, 979 N.E.2d 992.

¶ 16 While plaintiff cites to several cases that reference a prisoner's right not be detained longer than the court's sentence, these cases do not support his theory—that his MSR term should be included within the 52-year sentence. Here, the plaintiff cannot

refute the plain statutory language or the interpreting case law *supra*. It is the plaintiff's burden to show that (1) he has a clear right to the relief requested, (2) there is a clear duty on the part of the defendant to act, and (3) clear authority exists in the defendant to comply with an order granting *mandamus* relief. *Rodriguez*, 376 Ill. App. 3d at 433-34 (citing *Baldacchino*, 289 Ill. App. 3d at 109). In this case, as the plaintiff has not shown that he has a clear right to the recalculation of his sentence, the trial court's dismissal of the plaintiff's petition is affirmed.

¶ 17

#### CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Montgomery County is affirmed.

¶ 19 Affirmed.