

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).

NO. 4-10-0325

Filed 6/8/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JASON WILLIAMS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
ANNE TAYLOR and ROGER E. WALKER, JR., Direc-)	No. 06MR599
tor, The Illinois Department of Corrections,)	
Defendants-Appellees.)	Honorable
)	Patrick W. Kelley,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

Held: The trial court did not err by granting defendants' motion to dismiss plaintiff's *mandamus* complaint where plaintiff failed to allege sufficient facts that would entitle him to *mandamus* relief.

Plaintiff, Jason Williams, an inmate in the Illinois Department of Corrections (DOC), appeals the trial court's dismissal of his *pro se* second amended *mandamus* complaint, wherein he sought to compel defendants, Anne Taylor, prisoner review board chairperson, and Roger E. Walker, Jr., the director of DOC, to restore his revoked good-conduct credits. We affirm.

On January 29, 2008, plaintiff filed his second amended *mandamus* complaint. He alleged, from February 1995 to August 2006, he received 18 prison disciplinary reports for DOC rule violations, resulting in revocation of good-conduct credit. Plaintiff sought to compel restoration of his credits and his immediate release from prison based on (1) defendants' failure

to provide him with documents showing the factual information relied upon to revoke his credits as required by section 3-5-1(b) of the Unified Code of Corrections (Code) (730 ILCS 5/3-5-1(b) (West 2006)), and (2) revocation of his good-conduct credits pursuant to an unconstitutional section of the Code.

On February 8, 2008, defendants filed a motion to dismiss plaintiff's second amended complaint, alleging he failed to state a claim for *mandamus* relief. On January 12, 2010, the trial court conducted a telephone hearing in the matter. For the reasons stated in defendants' motion to dismiss, the court allowed the motion and dismissed plaintiff's complaint with prejudice.

This appeal followed.

On appeal, plaintiff challenges the trial court's dismissal of his second amended *mandamus* complaint. The State maintains the court correctly dismissed plaintiff's complaint because he did not allege facts showing a clear right to the relief sought.

"*Mandamus* is an extraordinary remedy used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved." *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 38, 944 N.E.2d 337, 341 (2011). To obtain *mandamus* relief, the petitioner must establish "a clear right to the relief requested, a clear duty of the public official to act, and clear authority in the public official to comply with the writ." *Alvarez*, 241 Ill. 2d at 39, 944 N.E.2d at 341. A plaintiff must set forth 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). On appeal, the trial court's decision to grant a motion to dismiss a *mandamus* petition is subject to *de novo* review. *Neville*, 376 Ill. App. 3d at 1118, 878 N.E.2d at 833.

In his *mandamus* complaint, plaintiff sought to compel restoration of his good-conduct credit. His first alleged basis for relief was that neither DOC's director nor the prisoner review board sent him documents showing the factual information relied upon to revoke his credits as required by section 3-5-1(b) of the Code.

"[A]ny time a decision affecting the length of commitment is made, the committed person is entitled to know the factual basis for that decision. *Hynes v. Snyder*, 355 Ill. App. 3d 394, 402, 823 N.E.2d 231, 238 (2005). Specifically, section 3-5-1(b) of the Code (730 ILCS 5/3-5-1(b) (West 2006)) provides as follows:

"If the respective Department or the Prisoner Review Board makes a determination under this Code which affects the length of the period of confinement or commitment, the committed person and his counsel shall be advised of factual information relied upon by the respective Department or Board to make the determination[.]"

The adjustment committee is responsible for conducting hearings on prison disciplinary reports (20 Ill. Adm. Code 504.50(c)(6), amended at 27 Ill. Reg. 6214 (eff. May 01, 2003)) and "shall decide whether or not the offender committed the offense based upon all relevant information and evidence" (20 Ill. Adm. Code 504.80(j), amended at 27 Ill. Reg. 6214 (eff. May 01, 2003)). If the adjustment committee determines the offender committed the offense, it may recommend disciplinary action, including revocation of good-conduct credits. 20 Ill. Adm. Code 504.80(k)(4)(F), amended at 27 Ill. Reg. 6214 (eff. May 01, 2003).

The director must review adjustment committee dispositions that recommend revocation of good-conduct credit and may confirm such recommendations in whole or in part.

20 Ill. Adm. Code 504.80(p), amended at 27 Ill. Reg. 6214 (eff. May 01, 2003). The prisoner review board must approve revocations of good-conduct credit where the amount of credits revoked "exceeds 30 days, or when, during any 12-month period, the cumulative amount of credit revoked exceeds 30 days." 20 Ill. Adm. Code 1610.170(a), amended at 13 Ill. Reg. 3063 (eff. February 28, 1989).

"Based on the overall framework of the applicable statutes and regulations, the adjustment committee is the body designated to hear and decide inmate disciplinary reports and provide inmates with due process if good-conduct credits are revoked. *** On the other hand, the [prisoner review board's] role is not one of a fact finder but as the 'board of review for cases involving the revocation of good[-] conduct credits.'" *Lucas v. Taylor*, 349 Ill. App. 3d 995, 1002, 812 N.E.2d 72, 78 (2004).

Section 3-5-1(b)'s requirements are satisfied where the inmate is advised at the adjustment-committee level of proceedings of the factual basis for revocation of his good-conduct credit. *Ford v. Walker*, 377 Ill. App. 3d 1120, 1126, 888 N.E.2d 123, 128 (2007).

Here, the adjustment committee acted as fact finder in the disciplinary proceedings that resulted in revocation of plaintiff's good-conduct credits. Plaintiff acknowledged he received adjustment committee summaries that showed the factual basis for the adjustment committee's decisions. His receipt of those summaries satisfied section 3-5-1(b)'s requirements and he cannot show a clear right to *mandamus* relief on this alleged basis.

In his complaint, plaintiff also sought to compel restoration of his good-conduct

credits based on allegations that his credits were revoked under an unconstitutional provision of the Code. Specifically, he argued his good-credits were taken illegally because a public act amending section 3-8-7 of the Code (730 ILCS 5/3-8-7 (West 2006)) was held unconstitutional in *People v. Foster*, 316 Ill. App. 3d 855, 737 N.E.2d 1125 (2000). Again, the State contends plaintiff has no clear right to have his credits restored based upon this claim.

Section 3-8-7 of the Code contains requirements for DOC disciplinary proceedings, including procedures for cases involving the loss of good-conduct credits. 730 ILCS 5/3-8-7(e) (West 2006)). In *Foster*, 316 Ill. App. 3d at 860, 737 N.E.2d at 1130, this court held public act 89-688, which amended section 3-8-7 effective June 1, 1997, was unconstitutional because it violated the single subject rule. See also *People v. Burdunice*, 211 Ill. 2d 264, 271, 811 N.E.2d 678, 683 (2004).

As the State points out, plaintiff's brief failed to set forth material facts showing how the *Foster* decision affected the validity of his disciplinary proceedings. Further, although public act 89-688 was held unconstitutional, the version of section 3-8-7 in effect prior to the amendments still applied. See *Arnett v. Snyder*, 331 Ill. App. 3d 518, 523, 769 N.E.2d 943, 947 (2001). Plaintiff did not raise any claims with respect to the preamendment version of section 3-8-7. For those reasons, he has also failed to state a cause of action on this asserted basis.

Finally, we note plaintiff's appellate briefs contain arguments not raised before the trial court. "[T]he theory under which a case is tried in the trial court cannot be changed on review, and an issue not presented to or considered by the trial court cannot be raised for the first time on review." *In re Marriage of Schneider*, 214 Ill. 2d 152, 172, 824 N.E.2d 177, 189 (2005). We do not consider arguments raised by plaintiff for the first time on appeal.

In his second amended *mandamus* complaint, plaintiff failed to set forth sufficient facts showing he was entitled to *mandamus* relief. The trial court committed no error by granting defendants' motion to dismiss.

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

Affirmed.