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PRO SE APPELLANT:

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**IN THE
COURT OF APPEALS OF INDIANA**

BYRON BREASTON,
Appellant-Plaintiff,

vs.

DAVID BONFIGLIO,
Appellee-Defendant.

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No. 20A03-0609-CV-427

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0508-PL-65

August 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Byron Breaston (“Breaston”) was sentenced to two years in the Department of Correction and placed in the Elkhart County Work Release program. Breaston left the work release center on a four-hour pass and did not return. As a result, Judge David Bonfiglio (“Judge Bonfiglio”) issued a bench warrant for Breaston’s arrest and ordered Breaston to serve the remainder of his sentence. As a result of Judge Bonfiglio’s order, Breaston filed a civil lawsuit against the judge personally alleging civil rights violations. It is from the trial court’s order granting Judge Bonfiglio’s Trial Rule 12(B)(6) motion to dismiss that Breaston now appeals. We affirm.

A civil action may be dismissed under Trial Rule 12(B)(6) for “failure to state a claim upon which relief can be granted.” Such a motion tests the legal sufficiency of the pleadings, not the facts supporting it. *Dawson v. Newman*, 845 N.E.2d 1076, 1080 (Ind. Ct. App. 2006), *trans. denied*. Trial Rule 12(B)(6) motions are appropriately granted only if it is clear that there is no set of facts that would support the claimant’s claim for relief. *Id.* Our review requires us to look at the complaint to determine whether the allegations are capable of supporting relief under any set of circumstances. *Id.* In doing so, we look in a light most favorable to the non-moving party. *Id.* We review the trial court’s decision *de novo*. *Id.*

Judges enjoy absolute judicial immunity for all actions taken in their judicial capacity, unless those actions are taken in the complete absence of jurisdiction. *Id.* To determine whether an act is a judicial one, we look to: (1) the nature of the act itself, *i.e.*, whether the function is normally performed by a judge; (2) the expectations of the parties, *i.e.*, whether the act was done in the judge’s official capacity; and (3) whether the

act involves the exercise of discretion or judgment as opposed to a ministerial act that might as well have been committed to a private person as to a judge. *Id.* at 1080-81.

Judge Bonfiglio's order revoking Breaston's work release placement falls plainly within the purview of a judicial act. The act of revoking an offender's placement is an act done exclusively by a judge, it is done in the judge's official capacity, and it involves the judge's discretion. As such, Judge Bonfiglio is entitled to judicial immunity. The trial court properly dismissed Breaston's complaint.

Affirmed.

SULLIVAN, Sr. J., and ROBB, J., concur.