

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WAYNE COUNTY PROSECUTOR,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED

August 19, 1997

No. 196538

Wayne Circuit Court

LC No. 96-603380 CZ

Before: Markman, P.J., and Holbrook, Jr. and O'Connell, JJ.

PER CURIAM.

In this action pertaining to the authority of defendant Department of Corrections with respect to erroneous judgments of sentence, plaintiff appeals as of right the order of the circuit court granting summary disposition in favor of defendant. We dismiss plaintiff's appeal because plaintiff has articulated no specific case or controversy.

Although the complaint in the present case is not specific, it appears that an unspecified number of criminal defendants in the State of Michigan have been committed to the Department of Corrections pursuant to judgments of sentence that allegedly do not comport with Michigan law. Under Michigan law, a court may not impose a consecutive sentence upon a criminal defendant absent express statutory authority to do so. *People v Chambers*, 430 Mich 217, 220; 421 NW2d 903 (1988). However, several statutes not only permit the imposition of consecutive sentences, but mandate their imposition in particular situations. For example, MCL 768.7a(1); MSA 28.1030(1)(1), requires that the court impose consecutive sentences in cases where a defendant commits a criminal offense while incarcerated. Similarly, MCL 333.7401(3); MSA 14.15(7401)(3), requires the imposition of consecutive sentences for certain enumerated drug offenses.

According to the plaintiff, situations have arisen in which it appears that a criminal defendant should have received a consecutive sentence, but where the defendant is committed to the Department of Corrections pursuant to a judgment of sentence that does not specify whether the sentence is to be served concurrently with or consecutively to another sentence that the defendant is serving.<sup>1</sup> In these circumstances, it is, apparently, the practice of defendant Department of Corrections to notify both the sentencing court and the prosecuting attorney of the possible error. Unless and until an amended

judgment of sentence is received by defendant Department of Corrections, the sentence in question is treated as being a concurrent sentence.<sup>2</sup>

Aware of this practice, plaintiff prosecutor filed suit against defendant Department of Corrections, seeking to enjoin defendant's practice. Both parties moved for summary disposition. The court treated plaintiff's suit as a petition for writ of mandamus, granted defendant's motion for summary disposition, and denied plaintiff's motion. Plaintiff now appeals as of right.

Because plaintiff has appealed an order granting summary disposition, our review would normally be de novo. See *Peters v Dep't of Corrections*, 215 Mich App 485, 487; 546 NW2d 668 (1996). However, because we conclude that plaintiff has failed to present this Court with a case or controversy, we dismiss the appeal without reaching the substance of plaintiff's complaint.

As is evident from this Court's iteration of the facts, the present suit is not predicated on a specific judgment of sentence. A proper suit would involve at least one criminal defendant whose judgment of sentence contains the alleged errors complained of by plaintiff. See *Wayne County Prosecutor v Dep't of Corrections*, 451 Mich 569, 576; 548 NW2d 900 (1996). The involvement of a criminal defendant would create a "concrete and particularized" case or controversy, *Raines v Byrd*, \_\_\_ US \_\_\_, \_\_\_ S Ct \_\_\_, \_\_\_ L Ed 2d \_\_\_ (issued 5/26/97) slip op at 15, quoting *Bender v Williamsport Area School District*, 475 US 534, 543-544; 106 S Ct 1326; 89 L Ed 2d 501 (1986), meaning this Court could adjudicate a dispute that was not simply presented in the abstract. While plaintiff is the proper party to bring suit with respect to this action, *Wayne County, supra*; *Raines, supra*, plaintiff has brought no specific case or controversy before the Court.

Further, the involvement of a particular criminal defendant is indispensable to ensure that the rights of criminal defendants, who are the true parties in interest, are not unfairly prejudiced. See MCR 2.205(A), (B). Therefore, because plaintiff has named no criminal defendant as a party to this action, this Court is presented with no concrete and particularized case or controversy.

Dismissed.

/s/ Stephen J. Markman

/s/ Donald E. Holbrook, Jr.

/s/ Peter D. O'Connell

<sup>1</sup> This is not the first time this problem has reached the appellate courts. See *In re Carey*, 372 Mich 378, 380; 126 NW2d 727 (1964).

<sup>2</sup> Plaintiff's complaint actually reads as follows: "[n]otwithstanding [the mandatory consecutive sentencing provisions mentioned in the text of this opinion], Defendant solicits sentencing judges for meaningless concurrences in Defendant's practice of violating these policies and statutes, and in the absence of receiving such concurrences, or in the absence of correcting a manifest error in a sentencing

order, Defendant purports to dispense itself from the binding state sentencing law as shown by” various exhibits attached to the complaint.