

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Com. Ex Rel. Antonio Bundy, :
Appellant :
v. : No. 120 C.D. 2011
Lori A. Smith, Guard SCI-Somerset : Submitted: April 21, 2011

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: June 21, 2011

Antonio Bundy, an inmate formerly housed at the State Correctional Institution at Somerset (SCI-Somerset) appeals, pro se, the order of the Court of Common Pleas of Somerset County (trial court) dismissing his complaint in the nature of an action in replevin pursuant to the provisions of the Prisoner Litigation Reform Act (PLRA), 42 Pa.C.S. §§ 6601-6608.¹ Also before the Court for

¹ The PLRA is designed to give the courts the ability to dismiss actions concerning prison conditions that are filed by “frequent filers” whose claims are repeatedly found to lack merit. More specifically, Section 6602(f) of the PLRA, commonly referred to as the “three strikes rule”, provides, in pertinent part:

(f) **Abusive litigation.**—If the prisoner has previously filed prison conditions litigation and:

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disposition is the Appellee’s Motion to Dismiss Appeal Under Section 6602(f) of the Prison Litigation Reform Act filed by Lori A. Smith. We grant the motion to dismiss, and dismiss the appeal.

On October 28, 2008, Bundy filed the instant replevin action in the trial court against a guard at SCI-Somerset, Lori A. Smith, seeking monetary damages for the confiscation of photographs and pornographic materials from his cell.² On January 23, 2009, Smith filed preliminary objections in the nature of a

(1) three or more of these prior civil actions have been dismissed pursuant to subsection (e)(2);

* * *

[t]he court may dismiss the action....

42 Pa.C.S. § 6602(f).

In turn, Section 6602(e)(2) of the PLRA provides, in pertinent part:

(e) Dismissal of litigation.—Notwithstanding any filing fee which has been paid, the court shall dismiss prison conditions litigation at any time, including prior to service on the defendant, if the court determines any of the following:...

* * *

(2) The prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted or the defendant is entitled to assert a valid affirmative defense ... which, if asserted, would preclude the relief....

42 Pa.C.S. § 6602(e)(2).

² Section 6601 of the PLRA defines “prison conditions litigation”, in pertinent part, as “[a] civil proceeding arising in whole or in part under Federal or State law with respect to the conditions of confinement or the effects of actions by a government party on the life of an individual confined in prison. The term includes an appeal...” 42 Pa.C.S. § 6601. Section 6601 of the PLRA also defines “frivolous” as “[l]acking an arguable basis either in law or in fact.” *Id.* Bundy’s claims in the instant replevin action deal with “conditions of confinement” and “the effects of actions by a government party” on his life in prison. *Id.* The same is true of his appeal to this Court. *Id.*

demurrer in which she alleged, *inter alia*, that Bundy had failed to state claims upon which relief could be granted. On May 10, 2010, the trial court issued an order dismissing Bundy's cause of action with prejudice pursuant to Section 6602 of the PLRA.³

³ In the memorandum opinion filed in support of its order, the trial court stated the following, in pertinent part:

The within action was filed as an *in forma pauperis* proceeding on October 28, 2008. At the same time, [Bundy] had pending before the court another cause of action entitled *Commonwealth ex rel. Antonio Bundy v. Heidi Sroka, Grievance Coordinator* at docket number 13 Civil 2008, having been filed on January 7, 2008. The Department of Corrections on behalf of the defendant in the latter case filed a motion to dismiss which was set for argument on August 14, 2008. The basis for the dismissal motion regarded the factual basis for dismissal under [Section 6602(f) of the PLRA], the so-called "three strikes rule" for abusive prison conditions litigators. The court issued its memorandum opinion dismissing the *Heidi Sroka* matter based on [Bundy]'s record of litigation on February 17, 2009, which dismissal was appealed to the Superior Court. Accordingly, at the time of argument of the within matter, the court had already preliminarily determined [Bundy] to be an abusive litigator and was awaiting confirmation by the Superior Court of that assessment. By its memorandum in the nature of a non-pre[ce]dential decision filed April 13, 2010, this court was affirmed in its determination.

The [PLRA] provides that a trial court may dismiss a prisoner's cause of action if it should find that the prisoner had previously filed prison conditions litigation and three or more of those prior civil actions had been dismissed pursuant to [Section 6602(e)(2) of the PLRA]. The provision continues, however, to indicate that the court shall not dismiss a request for preliminary injunctive relief for a temporary restraining order which makes a credible allegation that the prisoner is in imminent danger of serious bodily injury. *Id.* The Superior Court has confirmed the court's analysis that Antonio Bundy is an abusive prison litigator for whom the trial court may dismiss subsequent causes of action. *Commonwealth ex rel. Antonio Bundy, Appellant v. Heidi Sroka, Grievance Coordinator,*

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On May 18, 2010, Bundy filed a notice of appeal of the trial court's order to the Pennsylvania Superior Court. On December 3, 2010, Smith filed a motion to dismiss Bundy's appeal pursuant to Section 6602 of the PLRA and Pa.R.A.P. 1972(a)(7).⁴ By order dated January 25, 2011, the Superior Court transferred the instant appeal, including Smith's motion to dismiss, to this Court. By order dated February 4, 2011, this Court stated that Smith's motion to dismiss would be decided on the briefs filed by the parties in this appeal.

In this appeal, Bundy claims: (1) the trial court erred in dismissing his action in replevin despite its own order of April 7, 2009 stating that "[t]he court will take the matter under advisement and issue a prompt ruling"; (2) the trial court violated Canon 3.A.(5) and (6) of the Code of Judicial Conduct; (3) the trial court violated Article 5, Sections 17 and 18 of the Pennsylvania Constitution; (4) the trial court erred in applying Section 6602(f) of the PLRA; and (5) the trial court violated his rights as guaranteed by the Bill of Rights, the Declaration of Independence, the United States Constitution, and the First Amendment.

However, before reaching the merits of Bundy's claims, we will initially consider Smith's motion to dismiss the appeal. We note⁵ the prior prison

SCI Somerset, Appellee, No. 1010 WDA 2009, filed April 13, 2010.

Upon review of [Bundy]'s pleadings there is no indication that [Bundy] is in imminent danger of serious bodily injury. Accordingly, we elect to dismiss the within cause of action in replevin pursuant to the authority granted the court under [Section 6602(f)] *Abusive litigation*.

Trial Court Opinion at 1-2.

⁴ Pa.R.A.P. 1972(a)(7) provides that "[e]xcept as otherwise prescribed by this rule, subject to Rule 123 (applications for relief), any party may move ... [t]o quash for any other reason appearing in the record."

⁵ It is well settled that this Court may take judicial notice of pleadings and judgments in
(Continued...)

conditions action cited by the trial court in Commonwealth ex rel. Bundy v. Sroka, (Som. C.C.C.P., No. 13 Civil 2008, filed May 19, 2009), aff'd, (Pa. Super., No. 1010 WDA 2009, filed April 13, 2010), was dismissed as frivolous and later affirmed on appeal to the Superior Court. We also note that in Bundy v. Beard, 924 A.2d 723 (Pa. Cmwlth.), aff'd per curiam, 596 Pa. 103, 941 A.2d 646 (2007), this Court dismissed a prison conditions action that Bundy had filed in our original jurisdiction as failing to state a claim upon which relief could be granted, that was later affirmed on appeal to the Pennsylvania Supreme Court.

As noted above, Section 6602(f) of the PLRA provides that “[i]f the prisoner has previously filed prison conditions litigation and ... [t]hree or more of these prior civil actions have been dismissed pursuant to subsection (e)(2) ... [t]he court may dismiss the action....” 42 Pa.C.S. § 6602(f). In addition, Section 6601 of the PLRA specifically states that the foregoing prison conditions litigation “[i]ncludes an appeal....” 42 Pa.C.S. § 6601. Moreover, Section 6602(e) of the PLRA provides that “[t]he court shall dismiss prison conditions litigation at any time....” 42 Pa.C.S. § 6602(e).

Based on the foregoing, it is clear that Bundy has filed three or more prior prison conditions actions that were either frivolous or without a basis for relief. As a result, it is proper for this Court to dismiss the instant appeal. Section 6602 of the PLRA, 42 Pa.C.S. § 6602; Smolsky v. Governor’s Office of Administration, 990 A.2d 173 (Pa. Cmwlth. 2010); Bailey v. Miller, 943 A.2d 1007 (Pa. Cmwlth. 2008).

other proceedings where appropriate. In re Estate of Schulz, 392 Pa. 117, 139 A.2d 560 (1958); Krenzel v. Southeastern Pennsylvania Transportation Authority, 840 A.2d 450 (Pa. Cmwlth. 2003).

Accordingly, Smith's motion to dismiss the instant appeal is granted, and Bundy's appeal is dismissed.

JAMES R. KELLEY, Senior Judge

