

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. : No. 2601 C.D. 2010
 : Submitted: July 15, 2011
 Beris Cabrera, :
 Appellant :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE PELLEGRINI

FILED: August 10, 2011

Beris Cabrera (Cabrera) appeals *pro se* from an order of the Court of Common Pleas of Fayette County (trial court) denying his petition for writ of mandamus seeking the Clerk of Courts of Fayette County (Clerk) to correct fines assessed in a February 2001 sentencing order because they are excessive and illegally directed to the use of the Fayette County Law Library. Because Cabrera failed to raise these issues in his direct appeal and a petition for a writ of mandamus is an inappropriate remedy in this case, we affirm.

Cabrera is an inmate currently incarcerated at the State Correctional Institution at Cresson (SCI-Cresson). On November 20, 2001, Cabrera appeared

before the sentencing court and was sentenced to a total of 30 to 60 years incarceration¹ for the charges of corrupt organizations, possession with intent to deliver a controlled substance (cocaine) and criminal conspiracy. The sentencing court also ordered Cabrera to pay the costs of prosecution, various court costs and imposed a total of \$450,000 in fines payable to the County of Fayette “for the use of the Law Library.” (Sentencing Transcript at 10.) During the sentencing hearing and in the resulting orders, the sentencing court indicated that it imposed such a sentence due to the excessive amount of illegal proceeds involved; the amount of cocaine distributed;² Cabrera’s prior record; the fact that Cabrera was a danger to society; and the trial court’s belief that a lesser sentence would depreciate the seriousness of his crimes.

Cabrera timely appealed his judgment of sentence to the Superior Court, challenging the sufficiency and weight of the evidence and arguing, *inter alia*, that his sentence was excessive. Cabrera’s appeal regarding his sentence focused solely on the length of his incarceration. He argued that his prison term was excessive and unreasonable but did not raise the issue of the alleged excessiveness of his fines in his direct appeal. The Superior Court affirmed the trial court’s judgment of sentence by

¹ Cabrera was sentenced to 10 to 20 years incarceration on each of the three counts for which the jury found him guilty. The trial court indicated that Cabrera’s sentences were to run consecutive to each other and consecutive to the federal sentence he was already serving.

² The criminal case involved the transportation and sale of a large amount of cocaine over an extended period of time. As the trial court found, “[f]rom October of 1995, until the end of 1997 or the beginning of 1998, Ramsey purchased between forty and sixty kilograms of cocaine from the Defendant, paying between twenty-two thousand (\$22,000.00) and twenty-eight thousand (\$28,000.00) dollars for each kilogram of cocaine.” (May 1, 2001 Opinion at 2.)

order dated October 16, 2001, *Commonwealth v. Cabrera*, 511 WDA 2001 (Pa. Super. Filed October 16, 2001), and the Supreme Court of Pennsylvania denied Cabrera’s petition for allowance of appeal. Cabrera also filed two petitions pursuant to Section 9541 of the Post-Conviction Relief Act, 42 Pa. C.S. §9541, both of which were denied.

Nine years later, Cabrera filed the instant petition for writ of mandamus, notwithstanding the trial court’s sentencing order, and sought an order from the trial court directing the Clerk to correct his “court costs” assessment and render his costs “paid in full.” In his petition, Cabrera argues that the \$450,000 he was ordered to pay was an illegal sentence because there is no statute or case law providing for the funding of a County Law Library through court costs. Cabrera also argues that the sentencing court erred in ordering such a high amount of costs without first holding a hearing to determine Cabrera’s ability to pay. The trial court entered an order denying Cabrera’s petition and this appeal followed.³

The matters regarding the excessiveness and the manner in which the fines⁴ were imposed in his sentencing order cannot be collaterally attacked in a

³ Mandamus is an extraordinary action “and is available only to compel the performance of a ministerial act or mandatory duty where there exists no other adequate and appropriate remedy; there is a clear legal right in the plaintiff, and a corresponding duty in the defendant.” *McCray v. Department of Corrections*, 582 Pa. 440, 447, 872 A.2d 1127, 1131 (2005) (citing *Jackson v. Vaughn*, 565 Pa. 601, 777 A.2d 436, 438 (2001)). Whether or not to grant a petition for a writ of mandamus is a matter of law; therefore, our standard of review is *de novo* and our scope of review is plenary. *Commonwealth v. Bethea*, 574 Pa. 100, 108, 828 A.2d 1066, 1071 n.5 (2003).

⁴ Although Cabrera refers to the monies ordered by the sentencing court as “court costs,” they are in actuality fines. Section 9726(b) of the Sentencing Code states that a sentencing court may impose a fine in addition to another sentence involving incarceration when:

(Footnote continued on next page...)

mandamus order directing the Clerk to strike those claims. First, mandamus is a remedy seeking a public official to carry out a ministerial act that the official has no choice but to carry out, and the only ministerial act the Clerk here is required to carry out is the imposition and collection of fines as prescribed in the court’s sentencing order. Second, this Court has stated, “the avenue to challenge the payment of criminal fines is in a direct appeal or in post conviction relief under the Post Conviction Relief Act, 42 Pa. C.S. §§9541 – 9546. These are adequate remedies by which an offender in custody may challenge any aspect of the sentence.” *Neely v. Department of Corrections*, 838 A.2d 16, 19 (Pa. Cmwlth. 2003) (citing *George v. Beard*, 824 A.2d 393, 396 (Pa. Cmwlth. 2003), *aff’d*, 574 Pa. 407, 831 A.2d 597 (2003)). Cabrera availed himself of those adequate remedies by taking an appeal of his sentence to the Superior Court and filing two petitions under the Post Conviction Relief Act, all of which were denied.

(continued...)

- (1) the defendant has derived a pecuniary gain from the crime; or
- (2) the court is of the opinion that a fine is specially adapted to deterrence of the crime involved or to the correction of the defendant.

42 Pa. C.S. §9726(b). The sentencing judge specifically stated that he was imposing Cabrera’s sentence due to the excessive amount of illegal proceeds involved in Cabrera’s drug transactions as well as Cabrera’s prior record and the belief that a lesser sentence would depreciate the seriousness of his crimes.

Because mandamus cannot be used to collaterally attack a sentencing order, the trial court properly dismissed Cabrera's action. Accordingly, its order is affirmed.

DAN PELLEGRINI, JUDGE

