

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher Harrison,	:	
Petitioner	:	
	:	
v.	:	No. 278 M.D. 2011
	:	Submitted: October 21, 2011
Pennsylvania Department of	:	
Corrections,	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: November 30, 2011

The Pennsylvania Department of Corrections (Department) has filed preliminary objections to the “Petition for Review in the Nature of a Petition for a Writ of Mandamus”¹ (Petition) filed by Christopher Harrison (Harrison) in this court’s original jurisdiction. We sustain the preliminary objections and dismiss the Petition.

In 1983, Harrison received sentences for rape, involuntary deviate sexual intercourse, burglary and aggravated assault. (Petition, ¶ 2.) In 1985, the sentencing judge altered the sentences, imposing a maximum sentence of three years of

¹ A writ of mandamus is an extraordinary remedy that seeks to compel official performance of a ministerial act or mandatory duty where there is no other appropriate and adequate remedy. *Clark v. Beard*, 918 A.2d 155, 159 (Pa. Cmwlth. 2007).

imprisonment for rape and ten years of probation for the other offenses. (Petition, ¶ 3.)

Harrison subsequently violated the terms of his probation. In 1990, the sentencing judge re-sentenced Harrison to three consecutive sentences of five to ten years for aggravated assault, involuntary deviate sexual intercourse and burglary. (Petition, ¶ 4.) The judge directed Harrison to serve the violation of probation sentences “before” serving other sentences imposed. (Petition, ¶ 8.)

A few months later, an attorney for the Department wrote a letter to the sentencing judge seeking clarification because the law did not permit a judge to require an offender to serve a new sentence prior to a sentence currently being served. (Petition, ¶ 9.) In response, the judge stated his understanding that an offender who violates probation must serve the violation sentence before another. The judge also indicated that he intended Harrison to serve the violation sentence “in addition to” the sentence Harrison was currently serving. (Petition, ¶ 10.)

Pursuant to the judge’s response, the Department aggregated Harrison’s violation sentence and the sentence Harrison was currently serving. (Petition, ¶ 11.) Harrison filed a grievance, claiming that his violation sentences should be concurrent with his prior sentences² and that the Department could not aggregate his sentences based on its correspondence with the judge. However, Harrison did not prevail. (Petition, ¶ 13.) Harrison subsequently filed his Petition with this court.

² Prior to 1996, there was a presumption that sentences run concurrently unless the judge stated otherwise. *See* Pa. R.Crim.P. 705, cmt.

In its preliminary objections, the Department argues that, under *Barndt v. Department of Corrections*, 902 A.2d 589 (Pa. Cmwlth. 2006), Harrison’s remedy is to file a *nunc pro tunc* petition with the sentencing court, not a mandamus petition with this court. We agree.

In *Barndt*, this court stated:

[The Department] alleges that its approach of using a letter of inquiry to a sentencing judge in instances seeking a sentencing order clarification is a long-standing practice. [The Department] correctly asserts, in defense of this practice, that since it is not a party to the criminal proceedings – including therein, the sentencing phase before the trial court – it cannot formally petition the sentencing court for clarification following the entry of an order, nor can it force a defendant or district attorney to so petition upon [the Department’s] need. [The Department] argues that, when an inmate . . . disagrees with a trial judge’s clarification following [the Department’s] inquiry and subsequent action thereon, a due process remedy is available to the inmate in the form of a petition *nunc pro tunc* to the sentencing court for reconsideration, modification, or clarification of the original sentencing order. We agree.

Id. at 597. Because Harrison has another appropriate and adequate remedy, he has no right to mandamus relief.

Accordingly, we sustain the Department’s preliminary objections and dismiss the Petition.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 30th day of November, 2011, it is hereby ordered that the preliminary objections filed by the Pennsylvania Department of Corrections to the “Petition for Review in the Nature of a Petition for a Writ of Mandamus” (Petition) filed by Christopher Harrison are sustained, and the Petition is dismissed.

ROCHELLE S. FRIEDMAN, Senior Judge