

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Howard Seth Jacobson,	:	
Petitioner	:	
	:	
v.	:	
	:	
Commonwealth of Pennsylvania	:	
(Clerk of Court), Jeffrey A.	:	
Beard, Ph.D, (Secretary of Corrections),	:	
Gerald Rozum, (Superintendent),	:	
(Business Manager), (Inmate Account	:	
Officer), (Inmate Records Supervisor),	:	No. 304 M.D. 2010
Respondents	:	Submitted: August 27, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: October 21, 2010

Howard Seth Jacobson (Jacobson), an inmate currently incarcerated at the State Correctional Institution at Somerset (SCI-Somerset), filed a Petition for Review in this Court’s original jurisdiction, seeking the exoneration of court costs and fines deducted from his prison account. The Pennsylvania Department of Corrections (Department), Jeffrey A. Beard, Ph.D, Secretary of the Department, Gerald Rozum, Superintendent of SCI-Somerset, and the Business Manager, Inmate Account Officer, and Inmate Records Supervisor at SCI-Somerset (collectively SCI) filed Preliminary Objections in the nature of a demurrer to the Petition for Review. For reasons that follow, we sustain SCI’s Preliminary Objections.

On November 6, 2006, Jacobson was sentenced to a term of seven and a half to fifteen years incarceration, and ordered to pay \$3,292.00 in court costs and fees. Upon serving his sentence, Jacobson was notified that Act 84¹ and Act 85² deductions would be taken monthly from his inmate account to satisfy the costs and fees imposed. The notice explained that the Inmate Accounting Office would deduct an initial payment of 20% from his account regardless of source, and would thereafter deduct 20% a month from all of his monthly income provided there was a balance exceeding \$10.00, until the Act 84 amount was paid off; and an additional 10% would be deducted until the Act 85 amount was paid. Subsequent to sending the notice, the Department began deducting 30% from Jacobson's inmate account every month.

On or about March 20, 2010, Jacobson filed a Petition for the Exoneration of Court Costs and Fees & Reimbursement of Funds Illegally Deducted from Inmates Prison Account Pursuant to 42 Pa.C.S. § 9728 with this Court, pro se, on the grounds that the funds came from personal gifts received by outside parties to purchase hygienic products and other necessities. On or about May 17, 2010, SCI filed Preliminary Objections to Jacobson's petition. The Preliminary Objections are currently before this Court.³

¹ Section 9728 of the Sentencing Code, 42 Pa.C.S. § 9728.

² Section 1101 of the Crime Victims Act, Act of November 24, 1998, P.L. 882, *as amended*, 18 P.S. § 11.1101.

³ The standards for sustaining preliminary objections in the nature of a demurrer are quite strict. A demurrer admits every well-pleaded material fact set forth in the pleadings to which it is addressed as well as all inferences reasonably deducible therefrom, but not conclusions of law In order to sustain the demurrer, it is essential that the plaintiff's complaint indicate on its face that his claim cannot be sustained, and the law will not permit recovery If there is any doubt, this should be resolved in favor of overruling the demurrer.

SCI contends that its demurrer should be sustained, and this case should be dismissed. Specifically, SCI argues that Jacobson is not entitled to relief because the Department has the authority to collect costs and fees under Act 84 where there is a court order; the court order does not have to specify the amount of the costs; Act 85 costs are also subject to deduction under Act 84; and gifts placed into an inmate's account are subject to deduction under Act 84. We agree.

On November 6, 2006, the Honorable Pamela Pryor Dembe entered thirteen orders each directing Jacobson to pay \$235.50 in costs and fees, and one order directing Jacobson to pay \$237.00 in costs and fees. SCI's Br., Ex. B. Section 9728 (b) (5) of the Sentencing Code,⁴ commonly known as Act 84, specifically states:

The county correctional facility to which the offender has been sentenced or the *Department of Corrections shall be authorized to make monetary deductions from inmate personal accounts for the purpose of collecting restitution or any other court-ordered obligation.* Any amount deducted shall be transmitted by the Department of Corrections or the county correctional facility to the probation department of the county or other agent designated by the county commissioners of the county with the approval of the president judge of the county in which the offender was convicted. *The Department of Corrections shall develop guidelines relating to its responsibilities under this paragraph.*

(Emphasis added). Further, Section 1101 of the Crime Victims Act, commonly known as Act 85, specifically states:

A person who pleads guilty or nolo contendere or who is convicted of a crime shall, in addition to costs imposed under 42 Pa.C.S. § 3571(c) (relating to Commonwealth portion of fines, etc.), pay costs of at least \$ 60 and may be

Pennsylvania Medical Soc'y v. Foster, 585 A.2d 595, 598 (Pa. Cmwlth. 1991) (quoting *Gekas v. Shapp*, 469 Pa. 1, 5-6, 364 A.2d 691, 693 (1976)).

⁴ 42 Pa.C.S. § 9728 (b) (5).

sentenced to pay additional costs in an amount up to the statutory maximum monetary penalty for the offense committed.

18 P.S. § 11.1101(a)(1). “No court order shall be necessary in order for the defendant to incur liability for costs under this section.” 18 P.S. § 11.1101(e). Moreover, according to the Department of Corrections Administrative Directive 005 (DOC-AD 005), income is defined as: “all funds credited to an inmate’s account regardless of source. The only exceptions are: refunds of commissary purchases, refunds of purchases initiated through the facility, money sent to the inmate for payment of a private viewing/deathbed visit, Social Security Disability payments, and Veterans Administration benefits.” DOC-AD 005, Glossary.⁵ Clearly, personal gifts received by outside parties to purchase hygienic products and other necessities are not an exception. Accordingly, the deductions from Jacobson’s funds derived from monetary gifts were proper. Thus, Jacobson’s petition fails to state a claim for which relief can be granted.

This Court notes that according to Jacobson’s petition he is relying on this Court’s decision in *Spotz v. Commonwealth*, 972 A.2d 125 (Pa. Cmwlth. 2009). However, the Preliminary Objections in that case were overruled on the basis that the court costs and fees were not ordered by the court, not on the basis of the source of income of the deductions. Thus, *Spotz* is clearly distinguishable from the case at bar.

For all of the above reasons, SCI’s Preliminary Objections are sustained.

JOHNNY J. BUTLER, Judge

⁵ “The Department’s Administrative Directives are available at <http://www.cor.state.pa.us>.” *Feigley v. Dep’t of Corr.*, 872 A.2d 189, 192 n.1 (Pa. Cmwlth. 2005).

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ORDER

AND NOW, this 21st day of October, 2010, the Preliminary Objections filed by the Pennsylvania Department of Corrections (Department), Jeffrey A. Beard, Ph.D, Secretary of the Department, Gerald Rozum, Superintendent of SCI-Somerset, and the Business Manager, Inmate Account Officer, and Inmate Records Supervisor at SCI-Somerset are sustained.

The Petition for Review is, therefore, dismissed.

JOHNNY J. BUTLER, Judge