

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Verron Fields, :
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 Petitioner :
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 v. :
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 The Pennsylvania Department of :
 Corrections, : No. 308 M.D. 2010
 Respondent : Submitted: May 27, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE ROBERT SIMPSON, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: June 21, 2011

Presently before this Court are the preliminary objections in the nature of a demurrer filed by Respondent Department of Correction (Department) in response to the *pro se* amended petition for review in the nature of mandamus filed by Verron Fields (Fields) in this Court's original jurisdiction. Fields is an inmate currently incarcerated at the State Correctional Institution (SCI) at Graterford and has filed this action seeking an order from this Court directing Department to allow him to purchase recording equipment and allow him to operate a music production and other business inside SCI Graterford. Because the Department's regulations are reasonably related to legitimate penological interests, Fields' petition for writ of mandamus must be dismissed.

In his petition for review, Fields asserts that he is, in essence, a musician who “creates songs consisting of lyrics and sounds on an electronic keyboard” (Petition ¶ 1) which he was authorized to purchase and retain by Department. Fields wishes to submit the songs he composes for copyright registration and alleges that because his music cannot be expressed in written form, he must include a recording of his compositions in order to qualify for copyright protection. Fields alleges that Department has prohibited him from purchasing the necessary audio recording equipment in order to record his compositions. The Department cited to prison policy DC-ADM 815 Section 2 – Commissary and Outside Purchases in support of its decision. Fields contests this reasoning as inadequate and alleges that Department failed to illustrate how the prohibition of audio recording equipment is reasonably related to a legitimate penological objective. Therefore, Fields seeks authorization from this Court to purchase and retain audio recording equipment “for the purpose of capturing the expression of his intellectual property, in order to submit a complete application for copyright registration.” (Petition ¶ 5).

Fields also avers that pursuant to DC-ADM 815, inmates may purchase from the prison commissary any guitar they chose so long as that guitar does not exceed \$500. However, DC-ADM 815 limits the choices of an inmate “who wishes to purchase a musical item that produces beats and rhythms,” (Petition ¶ 8), to one of two keyboards, with a maximum cost of \$229. Fields alleges that through this policy, Department has created a distinction among inmates who are similarly situated and that the prohibition against the purchase of certain musical instruments versus others violates equal protection. Fields again alleges that Department failed to illustrate how its limitation on certain musical items is reasonably related to any legitimate penological interest. Because other

musical instruments are allowed, he contends that he has a right “to purchase a piece of music production equipment for the purpose of creating his own style of music” (Petition ¶ 10), up to the same price limitation as other approved musical items.

Finally, Fields alleges that Department violated his constitutional right to equal protection and placed an unreasonable restriction on him by prohibiting him from engaging in a business or profession while authorizing other inmates to engage in certain business ventures.¹ According to Fields, Department has authorized three businesses at SCI-Graterford which are established and operated by inmates – namely Lifer’s snack food sales, LACEO ice cream sales, and NAACP photograph sales. Fields seeks authorization to establish and operate certain businesses at SCI Graterford, including: a music production service, internet research service, small loan service, concession stand, art brokerage service, grooming service, typing service, and graphic design service. Fields also seeks an order of this Court permitting him to employ members of the public and to obtain any and all instruments that he may require in order to establish and

¹ The inmate handbook provides that:

You are not permitted to incorporate or engage actively in a business or profession while under the supervision of the Department. If you engaged in a business or profession prior to your incarceration, you must assign authority for the operation of the business or profession to a person in the community. . . . Conducting a business or profession, except as noted below, will subject you to a misconduct. There are exceptions:

- ...
2. if you are in a Work Release Program, you may engage in a private business or profession, as part of your Work Release Program, if it does not place undue burden on the facility.

operate these businesses. All of Fields' requests for relief sound in mandamus because he is basically seeking an order of this Court directing Department to permit him to operate a business within the prison and to purchase and retain audio recording equipment and a more expensive keyboard.

What we glean from the preliminary objections, which read more like a brief or a motion to dismiss in federal court than preliminary objections filed in Pennsylvania courts,² Department asserts that Fields' request for mandamus relief is improper because it asks this Court to usurp Department's discretion in deciding what articles a prisoner is allowed to possess and to directly intervene in matters that are more properly left to the judgment of prison officials. Department also argues that Fields' petition should also be dismissed because even if DC-ADM 815 impinges upon Fields' constitutional rights, the regulation is valid because it is reasonably related to legitimate penological interests – specifically, the danger in allowing an inmate to possess and control any electronic equipment or musical instrument he or she selects. Because these are not ministerial acts or mandatory duties, Department argues that Fields' writ of mandamus must be dismissed.

² Preliminary objections in the nature of a demurrer admit as true all well-pled allegations and material facts averred in the complaint, as well as any inferences reasonably deduced therefrom. *Weaver v. Franklin County*, 918 A.2d 194, 199 n.6 (Pa. Cmwlth. 2007). However, a court need not accept as true any legal conclusions or expressions of opinion, and doubts should be resolved in favor of overruling the demurrer. *Id.*; *Silo v. Ridge*, 782 A.2d 394, 398 (Pa. Cmwlth. 1999). The allegations of a *pro se* petitioner are held to a less stringent standard, and “[i]f a fair reading of the [petition] shows that the [petitioner] has pleaded facts that may entitle him to relief, the preliminary objections will be overruled.” *Danysh v. Department of Corrections*, 845 A.2d 260, 262-63 (Pa. Cmwlth. 2004). A demurrer can only be sustained where the law states with certainty that no recovery is possible under the facts alleged. *Id.*

Mandamus is an extraordinary remedy that can only be used to compel the official performance of a ministerial act or a mandatory duty. *Iseley v. Beard*, 841 A.2d 168, 170 n.7 (Pa. Cmwlth. 2004). The purpose of mandamus is to enforce those rights which are already established; it is not an appropriate means by which to establish legal rights. *Id.*; citing *Waters v. Department of Corrections*, 509 A.2d 430 (Pa. Cmwlth. 1986). Mandamus will lie only where the petitioner demonstrates a clear right to relief, a corresponding duty on the part of the respondent, and the absence of any other appropriate or adequate remedy. *Doxsey v. Commonwealth*, 674 A.2d 1173, 1174 (Pa. Cmwlth. 1996). Mandamus will not be granted in doubtful cases. *Id.*

To make out a claim in mandamus, Fields would have to establish that Department has a non-discretionary duty to allow him to engage in his proposed business ventures and to purchase audio recording equipment and a more expensive keyboard. However, prison officials have a great deal of discretion in promulgating and enforcing rules to govern the prison community in order to maintain security, discipline and order. *Department of Public Welfare, Fairview State Hospital v. Kallinger*, 580 A.2d 887, 890 (Pa. Cmwlth. 1990). In addition, prison inmates do not have the same level of constitutional protections as non-incarcerated citizens, and “individual rights guaranteed under the federal or state constitution may be curtailed whenever prison officials, in the exercise of their informed discretion, reasonably conclude that those rights possess the likelihood of disrupting prison order or stability or otherwise interfering with the legitimate penological objectives of the prison environment.” *Bailey v. Wakefield*, 933 A.2d 1081, 1084 (Pa. Cmwlth. 2007).

Department regulations at issue here address the danger in allowing inmates to possess and control the electronic equipment of their choice as these instruments could be made into weapons or could be used to conceal weapons. DC-ADM 815 simply lists the instruments which have been determined by Department to be safe to introduce into a prison setting. In addition, there are numerous safety and security risks involved in allowing an inmate to engage in a business or profession within a prison, especially when that business involves loaning money to other inmates, surfing the internet, or the use of barber tools, not to mention Fields' absurd suggestion of bringing members of the general public into SCI Graterford to work for him. Every violation of the rights Fields alleged in his petition is balanced against the need for orderly administration and security of the prison. These acts are discretionary and Fields' action seeking a writ of mandamus is simply not maintainable. *See Bailey*, 933 A.2d at 1084; *Maute v. Frank*, 670 A.2d 737 (Pa. Cmwlth. 1996). As our Supreme Court has stated, and we have repeatedly reiterated, "[I]nternal prison operations are more properly left to the legislative and executive branches, and that prison officials must be allowed to exercise their judgment in the execution of policies necessary to preserve order and maintain security free from judicial interference." *Bronson v. Central Office Review Committee*, 554 Pa. 317, 321, 721 A.2d 357, 358 (1998).

Even if Fields' constitutional claims challenging Department's policies regarding purchasing musical equipment and engaging in a business were cognizable in mandamus, he would still have to prove that these restrictive policies do not serve a legitimate penological interest. "[W]hen a prison regulation impinges on an inmate's constitutional rights, the regulation is valid if it is reasonably related to legitimate penological purposes." *Turner v. Safley*, 482 U.S. 78, 87 (1987). The four factors relevant in determining the reasonableness of a

prison regulation are: “1) whether the regulation has a valid, rational connection with the legitimate governmental interest put forward to justify it, 2) whether alternative means of exercising the right remain open to the inmate, 3) the impact that accommodation of the right will have on guards, other inmates, and on allocation of prison resources, and 4) whether there exists an alternative that fully accommodates the inmates’ right at a *de minimis* cost to valid penological interests.” *Brown v. Department of Corrections*, 932 A.2d 316, 319 (Pa. Cmwlth. 2007) (citing *Turner*, 482 U.S. at 89-91).

In this case, the legitimate and neutral governmental interest put forward by Department to justify its policies prohibiting the purchase of certain musical equipment and prohibiting inmates from engaging in businesses while incarcerated is to maintain the safety of the institution, its inmates and/or employees. There is a valid, direct and rational connection between this governmental interest and Department’s regulations. Fields is allowed to purchase any of the musical instruments or other commissary items listed on DC-ADM 815, as those items have been approved as safe to enter the prison environment. The fact that he cannot purchase any instrument or audio equipment he chooses is a consequence of his incarceration and a decision that is properly left to the discretion of prison officials. In addition, allowing inmates to engage in business ventures such as running an internet research service, small loan service, concession stand, or grooming service present a myriad of safety and security issues and could wreak havoc on the orderly administration of the prison. Given all of these facts, Department’s regulations are constitutionally acceptable.

Accordingly, the preliminary objections filed by Department are sustained.

DAN PELLEGRINI, Judge

