

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donald Harris,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Jeffrey A. Beard, Secretary of	:	
Corrections,	:	No. 480 M.D. 2007
	:	
Respondent	:	Submitted: October 8, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: December 1, 2010

Donald Harris (Harris), an inmate currently incarcerated at SCI Greene¹ for burglary and related charges, filed a Petition for Review, pro se, in this Court’s original jurisdiction. Jeffrey A. Beard, Secretary of the Pennsylvania Department of Corrections (Department), filed an Answer and New Matter. Harris subsequently filed a pro se Response to the Department’s New Matter, and an Application for Special Relief in the Nature of Peremptory Judgment or in the Alternative Summary Judgment (Application). The Department filed a Cross-Application for Summary Relief (Cross-Application) seeking dismissal of Harris’ Petition for Review. Harris’ Application and the Department’s Cross-Application are currently before the Court. For reasons that follow, we deny Harris’ Application, grant the Department’s Cross-Application, and dismiss Harris’ Petition for Review.

¹ Properly, the State Correctional Institution in Greene County, PA.

Harris was originally serving a sentence for rape and related charges in 1985. He was released on September 10, 1997, having reached his maximum sentence. During his original incarceration, Harris had medical costs assessed to his inmate account as a result of misconduct, which occurred in 1988, in the amount of \$4,930.66. The order assessing the medical costs was dated July 9, 1997. Harris was incarcerated again in 2006 for his current burglary charges. In 2006, money was deducted from Harris' inmate account to pay the outstanding balance on his misconduct costs. Petitioner filed a Petition for Review seeking redress of the Department's taking of money from his account. The Department filed an Answer and New Matter. Harris filed a Response to the Department's New Matter. Harris subsequently filed an Application for Special Relief. The Department filed a Cross-Application for Summary Relief.

Harris argues that the July 9, 1997 order entered against him requiring him to pay medical costs is null and void because the prospective application of the Correctional Institution Medical Services Act (Act)² necessarily invalidates any prior administrative order founded on misconduct that occurred before the effective date of the Act. Specifically, he argues, the order entered against Harris was the result of misconduct that occurred in 1988, but the Act did not become effective until 1998, thus the order should be reversed. Harris relies on *Byrd v. Department of Corrections*, 743 A.2d 532 (Pa. Cmwlth. 1999) to support this contention. In *Byrd*, this Court held that the Act is to be applied prospectively not retroactively. Thus, Harris' contention that the Act is not applicable to his prior misconduct has arguable merit.

² 61 Pa.C.S. §§ 3301-3307.

However, the order at issue, assessing the medical costs, was entered on July 9, 1997. If Harris wanted to appeal the order, he had 30 days to file said appeal. Pa.R.A.P. 1512. Harris did, in fact, file a Petition for Review, but was subsequently released from prison on September 10, 1997, and failed to go forward with his appeal. By order dated December 15, 1998 this Court dismissed his Petition for failure to prosecute. Thus, by failing to prosecute the only appeal he filed within the appeal period, Harris has waived this argument.

Harris next argues that the Department is barred from renewal of the assessment of medical fees by failing to recover said fees within one year of his release from prison. Specifically, it is Harris' contention that Section 3305 of the Act, 61 Pa.C.S. § 3305, provides the Department with up to one year to file a civil action to recover money owed due to medical fees. Harris argues that by failing to do so the Department has waived its right to recover the costs now. We disagree.

Section 3305(a) of the Act provides: "The department may seek to recover any amount owed for medical services fees by an inmate upon release from prison through a civil action brought within one year of the inmate's release. The department shall have the burden to prove the amount owed." 61 Pa.C.S. § 3305(a). This provision is not a statute of limitations on the time the Department has to recover the costs. "[N]o statute of limitation applies to the assessment, as that assessment was a statutorily authorized consequence of [Harris] being found guilty of institution misconduct." *Brome v. Dep't of Corr.*, 756 A.2d 87, 89 (Pa. Cmwlth. 2000). The provision at issue merely specifies the method that the Department may use to recover fees in the event that a prisoner is no longer incarcerated. Thus, there is no merit to this contention.

Having found that neither of Harris' contentions have merit, this Court denies Harris' Application. Having done so, we will now address the Department's Cross-Application.

The Department argues that since there are no issues of material fact, it is entitled to judgment as a matter of law. We agree.

Summary relief may only be granted if the right of the applicant is clear. *See* Pa. R.A.P. 1532(b). Where the parties have filed cross-motions for summary relief, the Court must determine whether it is clear from the undisputed facts that one of the parties has established a clear right to the relief requested.

Iseley v. Beard, 841 A.2d 168, 169 n.1 (Pa. Cmwlth. 2004).

Here, as detailed in the above analysis, it is clear from the undisputed facts, that the Department has established a clear right to the dismissal of Harris' Petition for Review as the Petition for Review is clearly without merit. We, therefore, grant the Department's Cross-Application.

For all of the above reasons, we deny Harris' Application, grant the Department's Cross-Application, and dismiss Harris' Petition for Review.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 1st day of December, 2010, the Application for Special Relief in the Nature of Peremptory Judgment or in the Alternative Summary Judgment filed by Donald Harris is denied; the Cross-Application for Summary Relief filed by Jeffrey A. Beard, Secretary of the Pennsylvania Department of Corrections, is granted; and the Petition for Review filed by Donald Harris is dismissed.

JOHNNY J. BUTLER, Judge