

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jimmy L. Lindsey, :  
 :  
 Petitioner :  
 :  
 v. : No. 495 C.D. 2011  
 :  
 Pennsylvania State Police, : Submitted: September 23, 2011  
 Respondent :

OPINION NOT REPORTED

MEMORANDUM OPINION  
PER CURIAM

FILED: November 14, 2011

Jimmy L. Lindsey (Lindsey), *pro se*,<sup>1</sup> petitions for review of a determination from an Administrative Law Judge (ALJ) of the Office of Attorney General (OAG) denying Lindsey a hearing on his appeal from the Pennsylvania State Police (PSP) Central Repository that found invalid Lindsey's request for a correction of his criminal history record pursuant to the Criminal History Records Information Act (CHRIA), 18 Pa.C.S. §§ 9101–9183. We affirm.

Lindsey initiated a challenge to the accuracy of his criminal history with the PSP, asserting:

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<sup>1</sup> It appears from the record that Lindsey is an inmate at SCI-Coal Township.

Specifically, 278, 279, 280, & 309 of 1993 and related charges, should all be dismissed and removed; said charges should not be present on ANY criminal agency's records due to the fact that said charges derived out of FRAUD! Therefore, they are VOID!

Original Record (O.R.), Lindsey's "Statement of Facts" at 2.<sup>2</sup> Lindsey asserted the inaccuracies of his criminal record as:

- 1) FRAUD ON THE Court,
- 2) DUE PROCESS VIOLATIONS

O.R., PSP Review Of Criminal History Record Information Form (hereinafter, Form SP4-165). In support of his request, Lindsey asserted that the challenged charges were born out of fraudulent proceedings in the Columbia County Court of Common Pleas (hereinafter, Court of Common Pleas), and summarized his arguments thusly:

- 1) The absence of jurisdiction
- 2) failure to present the case to a Grand Jury
- 3) unauthorized interaction
- 4) absence of probable cause
- 5) destruction of evidence of actual innocence
- 6) Factually Invalid - therefore, Factually Innocent

(Sic) O.R., Statement of Facts at 4.

Following its review of Lindsey's challenge and his criminal history record, the PSP Central Repository determined that the challenge was invalid on the

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<sup>2</sup> We note that Lindsey fails to specify with any greater detail the charges, and/or any other criminal history records, challenged herein.

basis that Lindsey challenged the events and judicial processes that led to his listed convictions, but did not challenge the actual criminal history record itself. Lindsey thereafter appealed from the PSP's determination to the OAG.

By determination dated February 28, 2011, the ALJ held that Lindsey had failed to provide adequate justification to the PSP in regards to any inaccuracies in the reporting of his criminal history, and noted that Lindsey was restricted under the CHRIA to providing evidence that the record maintained by the PSP in its Central Repository was incorrect. The ALJ further determined that Lindsey had failed to set forth any basis for a hearing on the matter, and concluded that Lindsey's criminal record as provided was an accurate representation of his criminal history. Lindsey now petitions for review of the ALJ's determination.<sup>3</sup>

Lindsey presents six issues for review, which we reprint *verbatim*:

- 1.) Whether there was an absence of authority and jurisdiction with the 1993 criminal charges?
- 2.) Did the State fail to bring the 1993 criminal case before a grand jury - thus constituting due process violations?
- 3.) Was the 1993 charging instruments without District Attorney's approving signature (sic)?

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<sup>3</sup> This Court's review of an order of an ALJ of the OAG relating to the CHRIA is limited to determining whether constitutional rights were violated, whether an error of law was committed or whether necessary findings of fact are supported by substantial evidence. Dunbar v. Pennsylvania State Police, 902 A.2d 1002 (Pa. Cmwlth. 2006), petition for allowance of appeal denied, 591 Pa. 667, 916 A.2d 635 (2007).

- 4.) Does the secured party have a sole controlling interest over the debtor and all his assets?
- 5.) Did the Trail (sic) Court have the authority to charge, hear, convict, and sentence in this mater (sic)?
- 6.) Whether the 1993 charges were/are inaccurate and thus, should not be in existence - should they be removed due to the constitutional defects?

Lindsey Brief at 5.<sup>4</sup>

Lindsey's instant challenge and appeal were brought pursuant to Section 9152 of the CHRIA, which states in its entirety:

Chapter 91. Criminal History Record Information

Subchapter F. Individual Right of Access and Review

§ 9152. Procedure

(a) Rules and regulations.--The Attorney General in cooperation with appropriate criminal justice agencies shall promulgate rules and regulations to implement this section and shall establish reasonable fees.

(b) Requests for information.--Any individual requesting to review his or her own criminal history record information shall submit proper identification to the criminal justice agency which maintains his or her record. Proper identification shall be determined by the officials of the repository where the request is made. If criminal history record information exists the individual may review a copy

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<sup>4</sup> Lindsey also references in his brief an undeveloped theory regarding an aggrieved secured party, a debtor and security interest, and a holder-in-due-course priority claim. Notwithstanding Lindsey's failure to properly preserve and present any such issue, such a theory is beyond the scope of the CHRIA, and we will not address it.

of such information without undue delay for the purpose of review and challenge.

**(c) Challenge of accuracy.--The individual may challenge the accuracy of his or her criminal history record information by specifying which portion of the record is incorrect and what the correct version should be. Failure to challenge any portion of the record in existence at that time will place the burden of proving the inaccuracy of any part subsequently challenged upon the individual. Information subsequently added to such record shall also be subject to review, challenge, correction or appeal.**

(d) Review of challenge.--All criminal justice agencies shall have 60 days to conduct a review of any challenge and shall have the burden of proving the accuracy of the record. The decision on the challenge shall include all information, including, but not limited to, the jurisdiction and docket number of any relevant court decision which formed a basis for the decision. If the challenge is deemed valid, the appropriate officials must ensure that:

(1) The criminal history record information is corrected.

(2) A certified and corrected copy of the criminal history record information is provided to the individual.

(3) Prior erroneous criminal history record information disseminated to criminal justice agencies shall be destroyed or returned and replaced with corrected information.

(4) The individual is supplied with the names of those noncriminal justice agencies and individuals which have received erroneous criminal history record information.

(e) Appeals.--

(1) If the challenge is ruled invalid, an individual has the right to appeal the decision to the Attorney General within 30 days of notification of the decision by the criminal justice agency.

(2) The Attorney General shall conduct a hearing de novo in accordance with the Administrative Agency Law. The burden of proof shall be upon the party bearing the burden of proof on the challenge.

(3) The decision of the Attorney General may be appealed to the Commonwealth Court by an aggrieved individual.

18 Pa.C.S. § 9152 (emphasis added).

It is well-established law that a party cannot utilize the CHRIA as a means to collaterally attack an underlying arrest and subsequent conviction. Clark v. Pennsylvania State Police, 760 A.2d 1202 (Pa. Cmwlth. 2000). Lindsey concedes repeatedly that his instant challenge directly and solely addresses “the authenticity of certain charges,” and that it is the initial charges themselves, and the ensuing judicial proceedings, that were fraudulent and should therefore not be in existence within the records of any criminal justice agency. O.R., Lindsey’s “Appeal Process” at 2. In short, the challenge proffered by Lindsey is to the very existence of the charges themselves, and not to the accuracy of the reporting of those charges and/or resulting criminal records to, or to the maintenance of those records by, the PSP Central

Repository.<sup>5</sup> Lindsey’s own argument further expressly states that “[t]he Defects were made at the **beginning** [of the charging process] to which (sic) makes their **inception** Flawed and Fraudulent.” Lindsey’s Brief at 10-11 (emphasis added).

Lindsey clearly misapprehends the purpose and scope of the CHRIA in general, and of the challenge provisions contained within Section 9152 of the CHRIA. To the extent that Lindsey seeks to challenge the authority of the charges originally brought against him, and/or seeks to challenge the legal sufficiency and/or constitutionality of the judicial proceedings that flowed from those charges, the criminal proceedings in the Court of Common Pleas on those charges is and was the sole avenue for the address of, and appeal from, such challenges. The underlying charges and judicial proceedings that form the foundation of Lindsey’s criminal history record contained within the PSP Central Repository are beyond the scope of the CHRIA’s provisions. Clark.

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<sup>5</sup> As defined in Section 9102 of CHRIA, 18 Pa.C.S. § 9102, criminal history record information is information about a case after an arrest and initiation of criminal proceedings. Accord Department of Auditor General v. Pennsylvania State Police, 844 A.2d 78 (Pa. Cmwlth. 2004).

Accordingly, we affirm.<sup>6,7</sup>

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<sup>6</sup> We emphasize, notwithstanding our foregoing analysis, that Lindsey's challenge in this matter has failed to adequately specify the particular portion of his criminal record that Lindsey contends is incorrect. Even assuming, *arguendo*, that Lindsey's instant challenge was properly directed at correctable information within the scope of the CHRIA, Lindsey's complete lack of specificity precludes any effective review of his requested challenge.

<sup>7</sup> Lindsey's instant *pro se* challenge - at every level from his original filing with the PSP, to his appeal to the OAG, to his appeal to this Court - demonstrates a deep and fundamental misunderstanding of the law in general, of the CHRIA and its procedures in particular, and of the basic judicial procedures applicable both to Lindsey's instant challenge, and to his prior criminal proceedings. While this Court is sympathetic to the difficulty facing all *pro se* parties, it is axiomatic that a party seeking to represent himself assumes the risk that his lack of legal knowledge might prove to be his undoing. Commonwealth v. Geatti, \_\_\_A.3d\_\_\_ (Pa. Cmwlth., No. 1948 C.D. 2010, filed July 28, 2011).



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 Respondent :

**PER CURIAM**

**ORDER**

AND NOW, this 14th day of November, 2011, the determination of the Office of Attorney General, Regulatory Compliance & Intelligence Section, in the above-captioned matter, dated February 28, 2011, is affirmed.