

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Timothy Dockery, :  
 :  
 Petitioner :  
 :  
 v. : No. 58 M.D. 2010  
 :  
 : Submitted: November 5, 2010  
 :  
 Kenneth R. Cameron, Superintendent :  
 Michelle Houser, Unit Manager :  
 James Harrington, Psychologist :  
 Robert Reed, Hearing Examiner :  
 McConeghy, COI, Stell, COI, :  
 Respondents :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
 HONORABLE PATRICIA A. McCULLOUGH, Judge  
 HONORABLE JAMES R. KELLEY, Senior Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
 BY JUDGE McCULLOUGH

FILED: April 4, 2011

Before the Court are the preliminary objections of Kenneth Cameron, Michelle Houser, James Harrington, Robert Reed, Corrections Officer McConeghy, Corrections Officer Stell (collectively, the Respondents), and Jeffrey A. Beard, former Secretary of the Pennsylvania Department of Corrections (Secretary Beard), to the amended petition for review of Timothy Dockery.

Dockery is an inmate who is currently incarcerated at the State Correctional Institution at Frackville. On February 1, 2010, Dockery filed a “Petition for a Writ of Mandamus” (Petition) against the Respondents, who are employees of the State Correctional Institution at Cresson (SCI Cresson): Cameron is prison

superintendent (Petition ¶ 3); Houser is the unit manager for the secured special needs unit (Petition ¶ 4); Harrington is a psychologist (Petition ¶ 5); Reed is a hearing examiner (Petition ¶ 6); and Stell and McConeghy are corrections officers (Petition ¶ 7). On March 29, 2010, Dockery filed an “Amended Writ of Mandamus” (Amended Petition) seeking leave to add Secretary Beard as a respondent. Also, in the body of the Amended Petition, Dockery names “Mr. Sutton,” a mailroom supervisor at SCI Cresson, as a respondent.

In the Amended Petition, Dockery avers that the Respondents, Secretary Beard, and Sutton applied policies, denied grievances, and/or committed other acts that violated his constitutional rights. Specifically, he alleges the following: (1) Secretary Beard revised policy DC-ADM 804 to prevent him from representing another inmate in a prison grievance, (Amended Petition ¶¶ 5-9); (2) prison officials tampered with his mail and overcharged him for postage, (Amended Petition ¶¶ 10-12); (3) the prison violated his Eighth Amendment rights by subjecting him to inadequate heating, cooling, ventilation, unsanitary sheets and clothing and eating utensils, and excessive noise, (Amended Petition ¶¶ 13-16); (4) medical personnel ignored the medical privacy of inmates, (Amended Petition ¶ 17); and (5) prison officials violated his First Amendment rights by denying him the use of a computer that contained legal reference material (Amended Petition ¶¶ 18-19). Dockery avers that he filed prison grievances and complaints with the regard to the foregoing, which were rejected. He also attached an addendum to the Amended Petition, averring that he is improperly housed in the secured special needs unit. Dockery asks this Court to direct the Respondents and Secretary Beard to pay him compensation in the amount of \$25,000.00 plus attorney’s fees and costs, to expunge misconduct reports, to abolish the revision to policy DC-ADM 804, to provide clean linens and food, to

regulate heat, to give him access to library facilities, and to sanction the mailroom supervisor. (Amended Petition ¶ 20.)

The Department of Corrections (DOC), on behalf of the Respondents and Secretary Beard, filed preliminary objections to Dockery's Amended Petition. DOC raised objections in the nature of a demurrer arguing that this Court lacks jurisdiction over the Respondents because they are not persons who perform a state-wide policy making function. DOC also demurred on the ground that Dockery has no cause of action against Secretary Beard under 42 U.S.C. §1983 or for the denial of prison grievances. In addition, DOC objects to the Amended Petition because Dockery referenced exhibits were not attached to the pleading.

In ruling upon preliminary objections in the nature of a demurrer, the Court must accept as true all well-pled facts and all reasonable inferences deducible therefrom, and it must determine whether the facts pled are legally sufficient to permit the action to continue. Gordon v. Department of Corrections, \_\_\_ A.3d \_\_\_ (Pa. Cmwlth., No. 477 M.D. 2010, filed December 30, 2010). We are not required, however, to accept conclusions of law or expressions of opinion. Id. Because a demurrer results in the dismissal of a suit, preliminary objections should be sustained only in cases that are clear and free from doubt and only where it appears with certainty that the law permits no recovery under the allegations. Id.

Regarding this Court's jurisdiction over the Respondents, section 761(a)(1) of the Judicial Code provides that we have exclusive original jurisdiction over all civil actions or proceedings "[a]gainst the Commonwealth government, including any *officer* thereof acting in his official capacity...." 42 Pa. C.S. §761(a)(1) (emphasis added). In Mickens v. Jeffes, 453 A.2d 1092, 1093 (Pa.

Cmwlth. 1983), we held that the Court did not have jurisdiction over the warden and records officer of SCI Dallas because they are not statewide officers:

As defined in Opie v. Glasgow, Inc., 30 Pa. Commonwealth Ct. 555, 559, 375 A.2d 396, 398 (1977), the term ‘officer, for jurisdictional purposes, includes *‘only those persons who perform state-wide policymaking functions and who are charged with the responsibility for independent initiation of administrative policy regarding some sovereign function of state government.’* Though Messrs. Jeffes and Rusnak, the other respondents herein, are admittedly state employees who perform policymaking functions, those functions, confined geographically as they are, are not statewide in character.

(Emphasis added.)

Here, Dockery does not allege in his Amended Petition that the Respondents are persons who perform state-wide policymaking functions and who are charged with the responsibility for independent initiation of administrative policy regarding a sovereign function of state government. Moreover, the averments in the Amended Petition establish that the Respondents are DOC employees who work at SCI Cresson and perform functions that are confined to that institution and are not statewide in nature. Therefore, this Court lacks jurisdiction over the Respondents and, accordingly, we sustain DOC’s preliminary objection.<sup>1</sup> Mickens.

Because we lack jurisdiction over the Respondents, the Court has a duty to transfer this matter to the proper tribunal, which in this case is the Court of

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<sup>1</sup> Although Sutton is not listed in the caption, Dockery treats Sutton as a respondent in the body of the Amended Petition. We observe that Sutton is a mail room supervisor at SCI Cresson and, thus, is not a state-wide policymaker within this Court’s jurisdiction.

Common Pleas of Cambria County, the judicial district where SCI Cresson is located and the action arose. Section 5103 of the Judicial Code, 42 Pa. C.S. §5103; Mickens.

Next, DOC contends that Dockery has no cause of action against Secretary Beard, who is a state-wide officer, because the only allegations in the Amended Petition implicating Secretary Beard concern the processing of prison grievances, which are not judicially reviewable.

DOC argues that Dockery's claims are controlled by 42 U.S.C. §1983, which is a remedy for the violation of rights created under the United States Constitution or under federal law. Wilson v. Marrow, 917 A.2d 357 (Pa. Cmwlth. 2007). We agree with DOC that, although Dockery's Amended Petition is captioned as a writ of mandamus, the averments pertaining to Secretary Beard allege violations of constitutional rights and federal law and are thus consistent with an action under 42 U.S.C. §1983.<sup>2</sup> However, regardless of whether this matter sounds in mandamus or §1983, DOC correctly argues that Dockery failed to state a cause of action against Secretary Beard.

Dockery avers in his Amended Petition that Secretary Beard revised DC-ADM 804 in April of 2009 to state that "one inmate cannot file a grievance for another inmate or in regards to an issue for another inmate," (Amended Petition at ¶¶ 5), and he asks this Court to order Secretary Beard to abolish the revision to DC-ADM 804. (Amended Petition at ¶ 20.) However, mandamus is an extraordinary remedy available only to compel the performance of a ministerial act or mandatory

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<sup>2</sup> Dockery also alleges that Secretary Beard violated "state regulations;" however, he does not identify those regulations or explain how those regulations were violated. Similarly, Dockery makes a bald allegation that Secretary Beard violated the Americans With Disabilities Act, 42 U.S.C. §§12131-12213, but cites no section that was purportedly violated and provides no explanation of the violation.

duty on the part of a governmental body. Barndt v. Department of Corrections, 902 A.2d 589 (Pa. Cmwlth. 2006). Mandamus is not used to direct the judgment or discretion of an official in a particular way, Pennsylvania Dental Association v. Insurance Department, 512 Pa. 217, 516 A.2d 647 (1986), or to establish legal rights. Jamieson v. Pennsylvania Board of Probation and Parole, 495 A.2d 623 (Pa. Cmwlth. 1985). The Supreme Court explained:

The writ cannot be used to control the exercise of discretion or judgment by a public official or administrative or judicial tribunal; *to review or compel the undoing of an action taken by such an official* or tribunal in good faith and in the exercise of legitimate jurisdiction, even though the decision was wrong; to influence or coerce a particular determination of the issue involved; or to perform the function of an appeal or writ of error.

Pennsylvania Dental Association, 512 Pa. at 227-228, 516 A.2d at 652 (emphasis added).

In this case, the act of amending, revising, or abolishing a provision of DOC's grievance policy is a matter squarely within the judgment and discretion of Secretary Beard. Mandamus is not the proper remedy to define the rights of inmates to grieve problems that arise during the course of their confinement or to compel Secretary Beard to undo changes in the grievance policy that he implemented.

Regarding §1983 liability, to establish a *prima facie* case under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) the action occurred under color of state law; and (2) the action is a deprivation of a constitutional right or a federal statutory right. Jones v. City of Philadelphia, 890 A.2d 1188 (Pa. Cmwlth. 2006). Although Dockery makes nebulous references in his Amended Petition to "state regulations," the Americans With Disabilities Act, and "constitutional rights,"

he does not cite, and our research has not discovered, any controlling legal authority for the proposition that an inmate has a constitutional or statutory right to file an internal prison grievance on behalf of another inmate.<sup>3</sup> See Shaw v. Murphy, 532 U.S. 223 (2001) (where an inmate was sanctioned by prison officials for sending a letter to another inmate for the purpose of assisting the other inmate in a defense against an assault charge, the Supreme Court held that the First Amendment to the United States Constitution does not afford prisoners a freestanding right to provide legal assistance to other inmates). In addition, Dockery avers that he filed a grievance on behalf of another inmate, which was rejected by the prison. (Amended Petition at ¶ 7.) However, this Court has held that DOC's grievance procedures do not implicate rights under the United States and Pennsylvania Constitutions, Lockett v. Blaine, 850 A.2d 811 (Pa. Cmwlth. 2004),<sup>4</sup> and that intra-prison grievance decisions are not final

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<sup>3</sup> In his brief, Dockery cites Wade v. Kane, 448 F. Supp. 678 (E.D. Pa. 1987), for the proposition that illiterate and non-English speaking inmates have a constitutional right to legal assistance from other inmates, even where the prison provides an adequate law library. However, Wade is distinguishable, because it involved a situation where SCI Graterford closed an inmate-operated law clinic and thereby denied prisoners the constitutional right of access to *the courts* and the right to an adequate law library. In contrast, the instant case does not involve access to the courts, but rather a policy governing an inmate's standing to seek relief through an internal prison grievance system.

<sup>4</sup> In Lockett, we reasoned as follows:

Lockett complains that the trial court erred in dismissing his claim that he had a constitutional right to hold Prison Officials to the timelines provided in the prison's grievance procedures. Here, he asserts that the Prison Officials did not timely respond to his grievances, that SCI-Greene failed to inventory his personal property and failed to provide him with soap, shower shoes, underwear, paper, medical forms and request slips. The trial court found that the grievance procedures were established by Department of Corrections regulations, and, as such, they do not implicate rights under the United States and Pennsylvania Constitutions. Sandin v. Conner, 515

**(Footnote continued on next page...)**

adjudications within our appellate jurisdiction or matters that we may review in a civil action involving the deprivation of constitutional rights. Ricketts v. Central Office Review Committee, 557 A.2d 1180 (Pa. Cmwlth. 1989); Robson v. Biester, 420 A.2d 9 (Pa. Cmwlth. 1980). Therefore, for all of the foregoing reasons, we conclude that Dockery has not stated a cause of action against Secretary Beard.

Accordingly, DOC's preliminary objections in the nature of a demurrer are hereby sustained.<sup>5</sup> Secretary Beard is dismissed from this matter. The Court lacks jurisdiction over the Respondents and, for that reason, this matter is hereby transferred to the Court of Common Pleas of Cambria County.

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PATRICIA A. McCULLOUGH, Judge

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**(continued...)**

U.S. 472, 132 L. Ed. 2d 418, 115 S. Ct. 2293 (1995). We agree with the trial court.

Id., 850 A.2d at 820.

<sup>5</sup> DOC also filed a preliminary objection on the ground that referenced writings were not attached to the pleading. However, because this may be an amendable defect requiring ongoing court supervision, this objection is best addressed by the common pleas court following transfer.



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Respondents	:	

**ORDER**

AND NOW, this 4th day of April, 2011, the preliminary objections in the nature of a demurrer in the above-captioned matter are hereby SUSTAINED.

The claims against Jeffrey A. Beard are hereby dismissed.

The Court lacks jurisdiction over respondents Kenneth R. Cameron, Michelle Houser, James Harrington, Robert Reed, McConeghy, COI, and Stell, COI, and Sutton.

This matter is hereby transferred to the Court of Common Pleas of Cambria County pursuant to section 5103 of the Judicial Code, 42 Pa. C.S. §5103, for adjudication of the claims against the aforementioned respondents.

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PATRICIA A. McCULLOUGH, Judge