

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David D. Richardson, :
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 Petitioner :
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 :
 v. : No. 618 M.D. 2009
 : SUBMITTED: August 6, 2010
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 Teena A. Peters, Clerk of Courts, :
 Court of Common Pleas, :
 Chester County, Pennsylvania; and :
 Jeffrey A. Beard, Secretary, :
 Commonwealth of Pennsylvania, :
 Department of Corrections, :
 Respondents :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: October 14, 2010

Before this court are the preliminary objections of the Pennsylvania Department of Corrections (Department) to the original jurisdiction petition for review filed *pro se* by David D. Richardson as well as Richardson's motion for a default judgment against the Clerk of Courts of the Chester County Court of Common Pleas (Clerk). Richardson, an inmate in a state correctional institution, commenced an action against the Department and the Clerk, alleging that deductions made from his inmate account for court costs are improper, and seeking

the return of the deducted funds. For the reasons that follow, we sustain the Department's preliminary objections and transfer the remainder of the case, including the motion for default judgment, to common pleas.

For the purpose of considering the Department's preliminary objections, we take as true all of Richardson's well-pleaded material facts and any inferences reasonably deduced therefrom and determine if he has stated a cause of action as a matter of law. *Danysh v. Dep't of Corr.*, 845 A.2d 260 (Pa. Cmwlth. 2004).

Richardson, an inmate at SCI-Greensburg, alleges that on May 19, 2008, the Department began deducting 20% of all money deposited in his inmate account pursuant 42 Pa. C.S. § 9728(b)(5), commonly referred to as Act 84. Richardson acknowledges that at his sentencing, the judge included costs in the oral pronouncement of his sentence, and that the Department has in its possession a court commitment form DC-300B signed by the Clerk indicating that costs were imposed, as well as a computer printout enumerating the amount owed. Richardson makes two main arguments: first, he argues that the oral imposition of costs was invalid, and second, he argues that absent a court order signed by a judge, the Department has no legal authority to deduct funds from his account.¹

¹ As a preliminary matter, the Department asserts that it is immune from suit under 42 Pa. C.S. § 9764(C.1)(3). That recently enacted statute states:

The Department of Corrections, board and a county correctional facility shall not be liable for compensatory, punitive or other damages for relying in good faith on any sentencing order or court commitment form DC-300B generated from the Common Pleas Criminal Court Case Management System of the unified judicial system or otherwise transmitted to them.

This provision appears to have never been interpreted by this or any other court, and we will not do so here, as it is unnecessary to resolving the Department's preliminary objections.

Richardson first argues that the trial judge's oral imposition of costs was somehow invalid. He cites two cases, neither of which support his position. One, *Commonwealth v. Larsen*, 682 A.2d 783 (Pa. Super. 1996), makes no mention of the validity of oral sentences and merely reaffirms the power of the trial court to impose costs, and the other, *Commonwealth ex rel. Davis v. Board of Parole*, 365 A.2d 702 (Pa. Cmwlth. 1976) was vacated by our Supreme Court at 484 Pa. 157, 398 A.2d 992 (1979). The Superior Court has recognized the validity of sentences imposed from the bench, and we see no reason not to do the same. *See Com. v. Ristau*, 666 A.2d 338 (Pa. Super. 1995). For this reason, we find the oral imposition of costs in this case, the existence of which Richardson does not dispute, to be valid.

Richardson next argues that the deductions made by the Department are invalid because the Department does not have a signed court order in its possession, and instead is relying on, among other documents, a court commitment form signed by the Clerk. However, this court has repeatedly held that when an inmate does not dispute that costs were imposed at sentencing, the Department may rely on a court commitment form submitted by a clerk.² *Herrschaft v. Dep't*

² The Department appears to request that this court ignore the fact that Richardson acknowledged that costs were imposed by the sentencing judge, and issue a "broader ruling that clarifies [the Department's] ability to rely on forms certified by the Clerk of Courts . . . even if an inmate disputes the imposition of costs." Brief of Respondents at 16 n. 5. However, because this court decides the cases before it, and not litigants' hypothetical questions, we cannot take the Department's invitation to rule in a broader manner. *See Pittsburgh Palisades Park, LLC, v. Com.*, 585 Pa. 196, 203, 888 A.2d 655, 659 (2005) ("The courts in our Commonwealth do not render decisions in the abstract or offer purely advisory opinions . . . judicial intervention is appropriate only when the underlying controversy is real and concrete.") (internal quotation omitted).

of Corr., 949 A.2d 976 (Pa. Cmwlth. 2008); *Boyd v. Dep't of Corr.*, 831 A.2d 779 (Pa. Cmwlth. 2003).

For the reasons stated above, Richardson has not stated a claim against the Department, and we sustain the Department's preliminary objections. Therefore, the only unresolved claims in this case are those against the Clerk. The clerk of a court of common pleas is not a Commonwealth officer, and, therefore, we no longer have original jurisdiction over this case. 42 Pa. C.S. § 761. For this reason, we transfer the remaining claims, including the pending motion for default judgment, to the Chester County Court of Common Pleas.³ 42 Pa. C.S. § 5103; *Nagle v. Pa. Ins. Dep't.*, 406 A.2d 1229 (Pa. Cmwlth. 1979).

BONNIE BRIGANCE LEADBETTER,
President Judge

³ We note that common pleas has already once heard a claim by Richardson regarding his inmate account and ruled against him. That ruling, however, in a suit against the Department alone, was vacated by the Superior Court, because suits against the Department are properly heard in this court's original jurisdiction. *See Commonwealth v. Richardson*, 2671 EDA 2008 (filed June 3, 2009) (memorandum opinion). However, now that the Clerk is the sole respondent in this case, it is properly heard in common pleas.

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ORDER

AND NOW, this 14th day of October, 2010, the preliminary objections of Respondent Jeffrey A. Beard in the above-captioned matter are hereby SUSTAINED and Respondent Beard is DISMISSED as a party to this case. In addition, this case is TRANSFERRED to the Chester County Court of Common Pleas.

Jurisdiction relinquished.

BONNIE BRIGANCE LEADBETTER,
President Judge