

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher E. Martin, :
Appellant :
v. : No. 925 C.D. 2011
SUBMITTED: September 2, 2011
Mardi I. Vincent, Superintendent :
Robin Rutter, Deputy Superintendent :
of Centralized Services, Annett :
Kowalewski, Health Care :
Administrator, Robert Eller, D.O.C. :
Bureau Health Care Administrator, :
Attorney General, Secretary :
Jeffrey A. Beard :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: October 28, 2011

Christopher E. Martin appeals, *pro se*, from the order of the Court of Common Pleas of Somerset County, which dismissed his action as frivolous. We affirm.

Martin, an inmate in a State Correctional Institution, filed this suit after, in 2007, \$10 was allegedly deducted from his prison account as a co-pay for medical services he received while in prison. He asserts that because he was

incarcerated prior to the enactment of the law authorizing the deduction,¹ the deduction was a violation of due process and an *ex post facto* punishment.

Before common pleas, Martin moved to proceed *in forma pauperis*. Common pleas, however, dismissed the case, citing Rule of Civil Procedure 240(j), which allows dismissal of frivolous litigation before *in forma pauperis* status is granted. The official note following the rule states that “a frivolous action is one that lacks an arguable basis in either fact or law.” Rule of Civil Procedure 240(j), *citing Neitzke v. Williams*, 490 U.S. 319 (1989). Martin filed an appeal with the Superior Court, which transferred the case to this court.

Common pleas did not err in dismissing this case as frivolous. Because it is not a criminal punishment, the statute at issue cannot be an *ex post facto* sentence. In addition, the law is not being applied retroactively, rather, the co-pay is only applied to medical care provided after the enactment of the statute. This court previously addressed this question in *Weaver v. Department of Corrections*, 720 A.2d 178 (Pa. Cmwlth. 1998), and came to the same conclusion.

For all the foregoing reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

¹ The Prison Medical Services Act, Act of May 16, 1996, P.L. 220, *repealed by* The Correction Institution Medical Services Act, 61 Pa. C.S. §§ 3301-3307.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher E. Martin,	:	
Appellant	:	
	:	
v.	:	No. 925 C.D. 2011
	:	
Mardi I. Vincent, Superintendent	:	
Robin Rutter, Deputy Superintendent	:	
of Centralized Services, Annett	:	
Kowalewski, Health Care	:	
Administrator, Robert Eller, D.O.C.	:	
Bureau Health Care Administrator,	:	
Attorney General, Secretary	:	
Jeffrey A. Beard	:	

ORDER

AND NOW, this 28th day of October, 2011, the order of the Court of Common Pleas of Somerset County in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge