

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Anthony Dickerson, | : | |
| Petitioner | : | |
| | : | |
| v. | : | No. 947 M.D. 2010 |
| | : | Submitted: May 27, 2011 |
| Pa. Department of Probation | : | |
| and Parole, | : | |
| Respondent | : | |

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: July 12, 2011

Before this Court in our original jurisdiction are the preliminary objections of the Pennsylvania Board of Probation and Parole (Board) to a complaint in mandamus filed by inmate Anthony Dickerson (Dickerson), representing himself. Dickerson’s complaint challenges the Board’s decision to recommit him to a state correctional institution upon revocation of his parole for a technical parole violation. The Board objects that this Court lacks original jurisdiction over Dickerson’s suit, which essentially challenges a Board recommitment order. Alternatively, the Board asserts Dickerson’s complaint is based on an erroneous interpretation of a new statutory provision, which, even if properly filed in our original jurisdiction, would not entitle him to relief. Upon review, we sustain the Board’s preliminary objection raising jurisdiction and dismiss the complaint.

In his complaint, Dickerson avers as follows. Dickerson is currently incarcerated at the State Correctional Institution at Graterford (SCI-Graterford). The Board recommitted him to SCI-Graterford as a technical parole violator.

In October 2010, Governor Edward Rendell signed into law Senate Bill 1161, Session of 2009, Printer's Number 2241, which was designed to relieve an overburdened penal system. The intent of Senate Bill 1161 is to keep technical parole violators out of state correctional institutions. Specifically, Section 6138(c) of Senate Bill 1161 mandates that all technical parole violators be removed from state institutions.

Dickerson alleges he did not violate his parole by committing a new criminal offense; nevertheless, the Board incarcerated him at a state institution. Dickerson avers he unsuccessfully raised this issue with personnel at SCI-Graterford and the Board, as well as the Secretary of the Department of Corrections.

As to the remedy sought, Dickerson asks this Court to order "his custody be brought in compliance with Senate Bill 1161, by releasing him to a Parole Violator Center as per Sec. 6138(c)(6)." Compl. at 3.

The Board responded by filing preliminary objections,¹ asserting Dickerson's complaint does not contain a verification as required by Pa. R.C.P.

¹ In ruling on preliminary objections, we must accept as true all well-pled material allegations as well as all inferences reasonably deduced from those allegations. To sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and **(Footnote continued on next page...)**

No. 1024, and this Court lacks original jurisdiction over the complaint because it seeks review of a Board recommitment order, which must be filed in our appellate jurisdiction. The Board also argues that Dickerson’s claim is founded on an erroneous interpretation of Section 6138(c)(6) of the Prisons and Parole Code, 61 Pa. C.S. §6138(c)(6), which, even if filed in our original jurisdiction, would not entitle him to relief.²

A proceeding in mandamus is an extraordinary remedy at common law, designed to compel the performance of a ministerial act or mandatory duty. Lawrence v. Dep’t of Corr., 941 A.2d 70 (Pa. Cmwlth. 2007). “The purpose of mandamus is not to establish legal rights, but to enforce those rights already established beyond peradventure.” Id. at 72. We may only issue a writ of mandamus where the petitioner has a clear legal right to enforce the performance of a ministerial act or mandatory duty, the defendant possesses a corresponding duty to perform the act, and the petitioner possesses no other adequate or appropriate remedy. Id. Mandamus can only be used to compel performance of a ministerial duty and will not be granted in doubtful cases. Id.

The statutory provision to which Dickerson refers is codified at 61 Pa. C.S. §6138(c)(6). It states, “[t]he [B]oard shall divert technical parole violators

(continued...)

any doubt should be resolved by a refusal to sustain them. Kretchmar v. Commonwealth, 831 A.2d 793 (Pa. Cmwlth. 2003).

² This Court previously struck Dickerson’s brief because he did not comply with this Court’s prior order regarding service of his brief; thus, we directed this matter be submitted on the Board’s brief only.

from confinement in a State correctional institution unless the parolee's diversion poses an undue risk to public safety." Id. (Emphasis added.)

Here, Dickerson challenges the Board's decision to recommit him to a state correctional institution based on a technical parole violation. However, a challenge to a Board recommitment decision must be filed in this Court's appellate jurisdiction following a denial of administrative relief rather than through an action in our original jurisdiction. See Bronson v. Pa. Bd. of Prob. & Parole, 491 Pa. 549, 421 A.2d 1021 (1980); see also McMahon v. Pa. Bd. of Prob. & Parole, 504 Pa. 240, 470 A.2d 1337 (1983). As such, Dickerson's attempt to challenge the Board's decision to recommit him to a state correctional institution by way of an action in this Court's original jurisdiction is not proper.

Further, noticeably absent from Dickerson's complaint are any averments regarding the Board's recommitment order and whether he timely appealed that order. Absent any averments that Dickerson exhausted this adequate, available remedy through a timely administrative appeal, Dickerson cannot maintain a mandamus action in our original jurisdiction. See, e.g., Evans v. Pa. Bd. of Prob. & Parole, 713 A.2d 741 (Pa. Cmwlth. 1998) (failure to exhaust administrative remedies bars claim for mandamus); Pometti v. Pa. Bd. of Prob. & Parole, 705 A.2d 953 (Pa. Cmwlth. 1998) (requiring exhaustion of administrative remedies prior to review by this Court); St. Clair v. Pa. Bd. of Prob. and Parole,

493 A.2d 146 (Pa. Cmwlth. 1985) (failure to exhaust administrative remedies before the Board bars mandamus action in this Court’s original jurisdiction).³

In addition, Dickerson’s complaint asks this Court to compel the Board to divert him from a state correctional institution and place him in a community corrections center. However, Section 6138(c)(6) of the Prisons and Parole Code, relied on by Dickerson, vests the Board with discretion not to divert technical parole violators from state institutions where such diversions pose an undue safety risk. Thus, the Board’s decision regarding diversion necessarily contains a discretionary component. Because such a decision involves an exercise of the Board’s discretion, mandamus cannot lie. See Clark v. Beard, 918 A.2d 155 (Pa. Cmwlth. 2007) (mandamus may not be used to direct an official’s exercise of judgment or discretion in a particular way). For this additional reason, Dickerson cannot maintain an action in mandamus.

³ Well after Dickerson filed his complaint and the Board filed its preliminary objections and supporting brief, Dickerson filed a document styled “Judicial Notice” in which he asks this Court to cite the Board’s counsel “with obstruction and government interference[]” regarding his actions in connection with Dickerson’s administrative appeal. Pet’r’s “Judicial Notice,” filed 5/31/11, at 1. In support, Dickerson attaches several documents, including an administrative appeal, which is neither signed nor stamped as filed. As stated above, however, Dickerson’s complaint makes no reference to an administrative appeal, and he did not attach any such appeal (or any of the other documents attached to his “Judicial Notice”) to his complaint. Thus, we may not consider these documents. See, e.g., Feldman v. Lafayette Green Condominium Ass’n, 806 A.2d 497 (Pa. Cmwlth. 2002) (in considering preliminary objections, court must limit itself to matters contained within a complaint). Cf. Marriott Corp. v. Alexander, 799 A.2d 205 (Pa. Cmwlth. 2002) (in reviewing an order denying judgment on the pleadings, we consider only the pleadings and any documents properly attached to them).

Based on the foregoing, we sustain the Board's preliminary objection raising jurisdiction, and we dismiss Dickerson's mandamus action.⁴

ROBERT SIMPSON, Judge

⁴ Based on our disposition, we need not address the Board's preliminary objection regarding Dickerson's failure to include a verification with his complaint.

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| | : | |
| Respondent | : | |

ORDER

AND NOW, this 12th day of July, 2011, the preliminary objection filed by the Pennsylvania Board of Probation and Parole matter is **SUSTAINED**, and the petition for review filed by Anthony Dickerson is **DISMISSED**.

ROBERT SIMPSON, Judge