

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

John Carter, :  
 :  
 : Appellant :  
 :  
 v. : No. 1863 C.D. 2010  
 :  
 Robert J. Marsh, Melinda Smith, : Submitted: May 27, 2011  
 Brian Thompson, and Steven W. Davy :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: September 14, 2011**

John Carter (Carter) appeals from the order of the Court of Common Pleas of Centre County (trial court) that sustained the preliminary objection (PO) in the nature of a demurrer filed by Robert J. Marsh, Melinda Smith, Brian Thompson, and Steven W. Davy, who are employees of the Department of Corrections (DOC) (collectively, DOC Defendants) to Carter’s Complaint – Action in Mandamus (Complaint) and dismissed Carter’s Complaint with prejudice. In the Complaint, Carter alleges that while housed in the Restricted Housing Unit (RHU) of the State Correctional Institution at Rockview (SCI-Rockview), DOC Defendants refused to process Carter’s book publication order, which he alleges was in violation of DOC Policy

DC-ADM 803 “Inmate Mail and Incoming Publications.” For the reasons that follow, we affirm.

Carter is an inmate who is presently incarcerated at SCI-Rockview and was incarcerated at SCI-Rockview at the time of the events pertaining to this matter. Carter filed his Complaint alleging that in December 2008, while housed in the RHU, he attempted to order book publications from a book company in accordance with DC-ADM 803. The Complaint alleges that the Program Review Committee, which consists of the DOC Defendants, have an “unauthorized and unwritten policy practice in place that prohibits inmates in the RHU from ordering publications if the inmate is under ‘disciplinary status’ in the RHU.” (Complaint ¶ 9.) Carter alleges, however, that under “DOC Policy 6.5.1 . . . inmates in the RHU . . . are permitted [l]egal/personal correspondence as per DC-ADM 803 Inmate Mail and Incoming Publications.” (Complaint ¶ 7.) Carter alleges that on December 12, 2008, Defendant Davy, “who is responsible for processing publications ordered, refused to process [Carter’s] book publication order which he had submitted in December 2008, stating that because [Carter is] in the RHU under disciplinary custody he is not permitted to make any ‘outside purchases’ per DOC [P]olicy 6.5.1 (Section 1, paragraph 3b).” (Complaint ¶ 12.) The Complaint avers that DC-ADM 815 does not define “outside purchases” to include publications; rather, per DC-ADM 803, publications are considered a mail privilege. (Complaint ¶¶ 13-14.) Carter argues that DOC Defendants have a “duty to administer DOC Policy DC-ADM 803 . . . by permitting inmates to receive and order publications” and a “duty to administer DOC Policy 6.5.1 Attachment A . . . by permitting inmates to receive and order publications while in the RHU ‘as per DC-ADM 803.’” (Complaint ¶¶ 16-17.) As

relief, Carter requested that the trial court award him monetary damages and an order in the nature of mandamus directing DOC Defendants to comply with DOC Policy. (Complaint ¶¶ 21, 23.)

In response to the Complaint, DOC Defendants filed a PO in the nature of a demurrer asserting that, pursuant to Luckett v. Blaine, 850 A.2d 811, 820 (Pa. Cmwlth. 2004), “[i]nmates do not have a viable cause of action based upon a prison official’s failure to comply with prison directives or regulations.” (PO ¶ 17.) On August 9, 2009, the trial court sustained DOC Defendants’ PO and dismissed the Complaint with prejudice. This appeal ensued.<sup>1</sup>

Initially, we note that Carter’s appeal was originally filed in the Superior Court but, on August 2, 2010, the Superior Court entered an order transferring the matter to this Court for lack of jurisdiction. This Court, thereafter, directed DOC Defendants

---

<sup>1</sup> This Court, in Clark v. Beard, 918 A.2d 155, 158 n.4 (Pa. Cmwlth. 2007), has explained:

A preliminary objection in the nature of a demurrer admits every well-pleaded fact in the complaint and all inferences reasonably deducible therefrom. Composition Roofers Local 30/30B v. Katz, [581 A.2d 607, 609 (Pa. Super. 1990)]. It tests the legal sufficiency of the challenged pleadings and will be sustained only in cases where the pleader has clearly failed to state a claim for which relief can be granted. Id. When determining whether a preliminary objection in the nature of a demurrer was properly granted, an appellate court must accept as true all properly pleaded material facts. Id. We must confine our analysis to the complaint and decide whether sufficient facts have been pleaded to permit recovery if the facts are ultimately proven. Id. The demurrer may be granted only in cases which are so free from doubt that a trial would certainly be a fruitless exercise. Id.

Id. at 158 n.4.

to file with our Court all relevant DOC policies, which DOC Defendants have done.<sup>2</sup> As such, this Court can now conduct meaningful appellate review of the issues raised by Carter in his brief.

“Mandamus is an extraordinary writ” that lies to compel an official's “performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other appropriate and adequate remedy.” Pennsylvania Dental Association v. Insurance Department, 512 Pa. 217, 227, 516 A.2d 647, 652 (1986). Mandamus is not used “to direct the exercise of judgment or discretion” of an official in a particular way. Id. at 228, 516 A.2d at 652. Furthermore, the purpose of mandamus is “to enforce those rights which are already established,” not to establish legal rights. Jamieson v. Pennsylvania Board of Probation and Parole, 495 A.2d 623, 625 (Pa. Cmwlth. 1985).

---

<sup>2</sup> On March 3, 2011, this Court ordered DOC Defendants to file Policy DC-ADM 801(6)(A)(4), along with any other Policy that DOC Defendants cite on page 10, footnote 5, of their brief filed with our Court. DOC Defendants filed two policies on March 9, 2011; however, we issued a second order on March 16, 2011, instructing DOC Defendants to also file the versions of DOC Policy 6.5.1 “Administration of Security Level 5 Housing Units” and Policy 801 that were in effect at the time Carter initiated this matter before DOC. On March 22, 2011, DOC Defendants filed an Application for Relief from our March 16, 2011 order, to which an Answer was filed by Carter on March 30, 2011, and this Application for Relief was granted in part on April 12, 2011. Specifically, we ordered DOC Defendants to “file with this Court all relevant provisions in [DOC’s] Policy 6.5.1 ‘Administration of Security Level 5 Housing Units,’ which would have applied to [Carter’s] December 2008 request to order book publications while housed in the [RHU] as described in [the] Complaint, with a certification under oath that such provisions are the true, accurate, and complete response to this Court’s Order.” Carter v. Marsh (Pa. Cmwlth. No. 1863 C.D. 2010, filed April 12, 2011). On April 20, 2011, in accordance with our April 12, 2011 order, DOC Defendants filed a certified copy of the relevant provision of DOC Policy 6.5.1. Subsequently, Carter filed an Application for Relief on April 26, 2011, which this Court denied by order dated May 18, 2011.

Carter argues that he has a state-created right *to order and receive* book publications pursuant to 37 Pa. Code § 93.2 and DC-ADM 803, and DOC Defendants have the corresponding duty to administer the prescribed regulation. Section 93.2 provides, in pertinent part:

(g) *Incoming publications.*

*(1) A publication review committee consisting of staff designated by and reporting to the facility manager or a designee shall determine whether an inmate may receive a publication.*

*(2) Publications shall be received directly from a publisher, bookstore, book club, distributor or department store. Newspapers shall be mailed directly from the publisher.*

(3) Publications may not be received by an inmate if they:

(i) Contain information regarding the manufacture of explosives, incendiaries, weapons, escape devices, poisons, drugs or intoxicating beverages or other contraband.

(ii) Advocate, assist or are evidence of criminal activity, inmate misconduct, violence, insurrection or guerrilla warfare against the government.

(iii) Threaten the security of a facility.

(iv) Contain obscene material or explicit sexual materials as defined in 18 Pa. C.S. § 5903 (relating to obscene and other sexual materials and performances).

(v) Constitute a bulk mailing specifically intended for the purpose of advertising or selling merchandise.

(4) An inmate under 18 years of age may not receive explicit sexual materials as defined in 18 Pa. C.S. § 5903.

(5) A publication will not be prohibited solely on the basis that the publication is critical of penal institutions in general, of a particular facility, staff member, or official of the Department, or of a correctional or penological practice in this or any other jurisdiction.

(6) An inmate may receive only one copy of any publication unless granted permission by the publication review committee.

(7) Small letter sized pamphlets may be received in regular correspondence.

(8) Covers of hardbound publications may be damaged or removed during inspection in the discretion of mailroom staff.

37 Pa Code § 93.2 (emphasis added). DC-ADM 803, upon which Carter also relies, is similar to this regulation in that it does not speak to an inmate's right to "order" book publications but, rather, regulates the types of publications that can be received by inmates. DC-ADM 803(E) "Incoming Publications," generally provides that publications sent to an inmate must be sent from the original source, with some exceptions, and the content of a publication may not violate any DOC policy. Also notable is subsection 6 within DC-ADM 803(E), which provides that "b. Each inmate in a Level 5 Housing Unit may retain in his/her cell only the quantities of publications permitted under the policy applicable to that housing unit." (DC-ADM 803(E)(6)(b).)

DOC Defendants argue that Carter has not established a clear legal right to the relief requested because Section 93.2 does not provide that there is a legal right to *order* book publications while in the RHU and, additionally, Luckett instructs that inmates do not have a viable cause of action based upon a prison official's failure to

comply with prison directives or regulations. Additionally, DOC Defendants argue that they did not violate any procedural requirement of Section 93.2 because this regulation, providing that “a publication review committee consisting of staff designated by and reporting to the facility manager or a designee shall determine whether an inmate may receive a publication,” is not implicated in this matter because, here, Carter was never permitted to place the *order* for the publication in the first instance. 37 Pa. Code § 93.2. DOC Defendants highlight the language of Section 93.2(g)(2), which provides that “[p]ublications shall be received directly from a publisher, bookstore, book club, distributor or department store. Newspapers shall be mailed directly from the publisher.” DOC Defendants contend that this language means that “publications are outside purchases.” (DOC Defendants’ Br. at 9.) Therefore, according to DOC Defendants, at the time of Carter’s request, DOC Policy 6.5.1 provided that inmates housed in the RHU under disciplinary custody status were prohibited from making outside purchases:

3. Commissary

.....

b. [Disciplinary Custody] status inmate purchases are limited to approved commissary items for personal hygiene (excluding razors), underwear, and items needed for personal/legal correspondence (excluding pens/pencils). *Tobacco products and outside purchases are prohibited.*

(DOC Policy 6.5.1, Supplemental Record, filed April 20, 2011 (emphasis added).)<sup>3</sup>

In response, Carter argues that, because “publications” are not included under DC-

---

<sup>3</sup> DOC Defendants’ brief states that this language is found in DC-ADM 801(6)(A)(4), (DOC Defendants’ Br. at 9-10); however, when this Court ordered clarification, DOC Defendants filed an Application for Relief on March 22, 2011, in which it conceded that this subject language was not in DC-ADM 801 at the time Carter initiated this matter before DOC but, rather, this language only  
(Continued...)

ADM 815<sup>4</sup> as an “outside purchase,” it “is clear that the intention of the DOC was to have publications a part of the right to correspondence under DC-ADM 803, and not as an outside purchase item under DC-ADM 815.” (Carter’s Reply Br. at 2.)

Contrary to Carter’s position, it is not clear from the language set forth in Section 93.2 and DC-ADM 803 that Carter has a clear legal right to order and receive book publications while housed in the RHU under a disciplinary custody status, which is required for him to proceed in a mandamus action. Pennsylvania Dental Association, 512 Pa. at 227, 516 A.2d at 652. Section 93.2 and DC-ADM 803 speak only to whether an inmate is permitted to receive a publication—not to whether an inmate is permitted to first “order” a publication for receipt. Further, pursuant to Section 93.2, the publication review committee has the discretion to determine whether an inmate may receive a book publication. In addition, DOC Policy 6.5.1 provides that inmates under disciplinary custody status while housed in the RHU are not permitted to make outside purchases, which would apply to Carter’s request because the requested publication is not an item that can be purchased from the commissary. Logically, before an inmate can be permitted to receive a publication, an inmate must be granted permission to order or, in some other way, request a publication from an original source for delivery and ultimate receipt. Because Carter

---

appeared in DOC Policy 6.5.1. DOC subsequently certified a copy of the portion of this language that is found in DOC Policy 6.5.1, which is a confidential document that is never disclosed to inmates.

<sup>4</sup> Carter relies on Section 2(B)(22) of DC-ADM 815, which provides a list of the “[o]nly items listed in the Approved Outside Purchase sections below may be purchased,” and this list does not contain publications.



has not stated a claim for which relief can be granted, the trial court was correct in sustaining the PO and dismissing the Complaint with prejudice.

Accordingly, we affirm the order of the trial court.

---

**RENÉE COHN JUBELIRER, Judge**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

John Carter, :  
 :  
 Appellant :  
 :  
 v. : No. 1863 C.D. 2010  
 :  
 Robert J. Marsh, Melinda Smith, :  
 Brian Thompson, and Steven W. Davy :

**ORDER**

**NOW**, September 14, 2011, the Order of the Court of Common Pleas of Centre County in the above-captioned matter is hereby **AFFIRMED**.

---

**RENÉE COHN JUBELIRER, Judge**