

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregory Dunbar,	:	
Petitioner	:	
	:	
v.	:	
	:	
John E. Wetzel, Secretary for Pa. Dept.	:	
of Corrections, Centralized Records	:	
and Computation Unit, Mary Ann	:	
Durborow, Records Specialist 2,	:	No. 337 M.D. 2019
Respondents	:	Submitted: April 9, 2021

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: August 30, 2021

Before the Court are the preliminary objections filed by Respondent John E. Wetzel, Secretary of the Department of Corrections (respectively, Respondent Wetzel and Department), and Mary Ann Durborow, Records Specialist 2 for the Department (Respondent Durborow) in response to the June 14, 2019, Petition for Review (Petition) filed *pro se* by Gregory Dunbar (Dunbar), which asserts that his DC-300B commitment form is incorrect and that the criminal records documenting his incarceration are forgeries. Also before the Court are Dunbar’s preliminary objections to Respondents’ preliminary objections. Upon review, we overrule Dunbar’s preliminary objections, overrule Respondents’ preliminary objection asserting failure to exhaust administrative remedies, sustain Respondents’

preliminary objection in the nature of a demurrer,¹ and dismiss the Petition with prejudice.

I. Factual & Procedural Background

Dunbar is currently incarcerated in the State Correctional Institution at Camp Hill. Since 1986, he has been serving a sentence of 20 to 40 years for multiple offenses, including rape and attempted murder. *See Commonwealth v. Dunbar* (Pa. Super., No. 3374 EDA 2017, filed July 23, 2018), slip op. at 2, 2018 WL 3521965, at *1 (unreported).

On August 7, 2017, Dunbar sent a letter to the Department's central records office asking that his DC-300B commitment form² be corrected because it reflected that his 1985 plea to the charged offenses was "guilty" rather than "guilty but mentally ill."³ Petition ¶ 4 & Ex. 1. Respondent Durborow's July 25, 2018, response stated that the Department "has no control over the information found on the 300B form or the court orders. All request[s] for correction of these documents would need to be requested through the county that you were sentenced in." Petition

¹ Preliminary objections may be filed by any party for legal insufficiency of a pleading (demurrer). *See* Pa.R.C.P. No. 1028(a)(4).

² The DC-300B form reflects an inmate's criminal offenses, the disposition of those offenses before the trial court, and the duration of the sentence imposed for those offenses. It is generated by the Common Pleas Criminal Court Case Management System. *Commonwealth v. Heredia*, 97 A.3d 392, 394 n.3 (Pa. Super. 2014) (citing 37 Pa. Code § 96.4 and 42 Pa.C.S. § 9764).

³ Dunbar asserted that he brought his challenge pursuant to the Criminal History Record Information Act, 18 Pa. C.S. §§ 9101-9183 (CHRIA), which imposes a duty on Commonwealth agencies, primarily in law enforcement, to maintain complete and accurate criminal history records. *Haron v. Pa. State Police*, 171 A.3d 344, 351 (Pa. Cmwlth. 2017).

Ex. 2. The response also noted that Dunbar's DC16E sentence summary⁴ has a notation that in recognition of a previous typographical error, Dunbar's sentencing order should reflect a plea of guilty but mentally ill. *Id.*

In a January 25, 2019, follow-up response, Respondent Durborow reiterated that any issues Dunbar had with his sentencing or commitment documentation must be directed to the sentencing court rather than the Department. Petition Ex. 3. Dunbar asserts in his Petition that after another unsatisfactory follow-up with the Department in March 2019 concerning his DC-300B form, he had no other recourse than to Petition this Court for declaratory and injunctive relief. Petition ¶ 11 & Ex. 4.

Dunbar further claims that all charges against him were dismissed at the magisterial district judge (MDJ) level in 1985; therefore, all documentation underlying his sentence is forged and void and he is being wrongfully incarcerated. Petition ¶ 10 & Ex. 4. He avers that in March 2019, he filed criminal complaints against the prison's warden and grievance officer asserting false imprisonment and possession of forged documents. Petition ¶ 17 (citing Department Policy Statement 004, which sets forth procedures for investigation and administration of alleged criminal acts committed by or to inmates). Dunbar states that he was interviewed by an investigating officer in April 2019, but ultimately his complaints were disregarded. Petition ¶¶ 18-19.

Respondents filed preliminary objections asserting that Dunbar failed to exhaust his administrative remedies and fails to state a claim upon which relief can be granted. Respondents' Preliminary Objections at 5-9. Respondents maintain

⁴ Form DC16E lists an inmate's offenses and the minimum and maximum sentences for each, the minimum and maximum release dates, and any remarks relevant to the inmate's sentence. *See Butler v. Dep't of Corr.* (Pa. Cmwlth., No. 271 M.D. 2017, filed Feb. 14, 2018), slip op. at 3-4, 2018 WL 845010, at *2 (unreported).

that Respondent Durborow correctly advised Dunbar that the Department lacks the authority to adjudicate the legality of Dunbar's sentence or change the contents of his DC-300B court commitment forms, which derive from the sentencing court's order. *Id.* at 6-7.

Dunbar filed responsive preliminary objections asserting that Respondents' preliminary objections should be stricken for various procedural deficiencies. Dunbar's Preliminary Objections ¶¶ 1-10. Dunbar also raised an objection that this Court has a "conflict of interest" due to a pending civil suit he previously filed against this Court. *Id.* ¶¶ 10-11.

II. Parties' Arguments

Respondents argue that Dunbar failed to exhaust his administrative remedies and fails to state a cause of action against them because neither the Department nor they are authorized to adjudicate the legality of Dunbar's sentence or modify its conditions, much less release him, and that such authority resides only in the sentencing court. Respondents' Br. at 10 (citing *McCray v. Dep't of Corr.*, 872 A.2d 1127, 1133 (Pa. 2005), and *Powell v. Dep't of Corr.*, 14 A.3d 911, 916 (Pa. Cmwlth. 2011)). Respondents add that Dunbar has not alleged sufficient facts to establish that his records, including his DC-300B form, are incorrect or forged, or that his continued imprisonment is wrongful. *Id.* at 11-12 (citing *Spotz v. Commonwealth*, 972 A.2d 125, 131 (Pa. Cmwlth. 2009), and *Boyd v. Dep't of Corr.*, 831 A.2d 779, 783 n.6 (Pa. Cmwlth. 2003)).

Dunbar primarily argues that the exhibits appended to his brief, some but not all of which were attached to the Petition, support his assertions that his charges were dismissed in 1985, that subsequent records, including his DC-300B

form, have been falsified, and that he has therefore been illegally and falsely imprisoned since 1986. Dunbar’s Br. at 7-10.

III. Discussion⁵

A. Dunbar’s Preliminary Objections

First, Dunbar challenges Respondents’ preliminary objections on the basis that they lack a verification and a notice to plead as required by Pennsylvania Rules of Civil Procedure Numbers 1024(a) and 1026(a).⁶ Dunbar’s Preliminary Objections ¶¶ 2-4 (citing Pa.R.C.P. Nos. 1024(a) & 1026(a)). Dunbar also avers that Respondents’ preliminary objections contain a false proof of service in violation of Pennsylvania Rules of Appellate Procedure 121(b) and 122(a). *Id.* ¶¶ 5-7 (citing Pa.R.A.P. 121(b) & 122(a)).

⁵ In ruling on preliminary objections, this Court “must accept as true all well-pleaded material allegations in the petition for review, as well as all inferences reasonably deduced therefrom.” *Torres v. Beard*, 997 A.2d 1242, 1245 (Pa. Cmwlth. 2010). “The Court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion.” *Id.* “In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain them.” *Id.*

A preliminary objection in the nature of a demurrer admits every well-pleaded material fact in the complaint and all inferences reasonably deducible therefrom. *Torres*, 997 A.2d at 1245. 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.*

⁶ Rule 106 of the Pennsylvania Rules of Appellate Procedure provides: “Unless otherwise prescribed by these rules the practice and procedure in matters brought before an appellate court within its original jurisdiction shall be in accordance with the appropriate general rules applicable to practice and procedure in the courts of common pleas, so far as they may be applied.” Pa. R.A.P. 106. The appellate rules have their own provision, Rule 1513(e)(6), regarding verification of petitions filed in the original jurisdiction of an appellate court. Pa. R.A.P. 1513(e)(6). As this verification requirement is equivalent to the requirement cited in the Petition, however, we will disregard Dunbar’s error in referring to the incorrect rule. *See* Pa. R.A.P. 105(a) (“These rules shall be liberally construed to secure the just, speedy, and inexpensive determination of every matter to which they are applicable. . . .”).

Notably, Dunbar raised similar objections in a previous case he filed in this Court's original jurisdiction challenging the Department's finding that he committed misconduct by wrongfully possessing another inmate's legal work. *Dunbar v. Wetzel* (Pa. Cmwlth., No. 75 M.D. 2019, filed Jan. 21, 2020), slip op. at 4-5, 2020 WL 283899, at *2-3 (unreported) (sustaining Respondent Wetzel's preliminary objections to Dunbar's petition for review alleging impropriety in Department's finding of misconduct). We overruled those objections, finding no verification was required because Respondents' objections neither averred new facts nor denied facts raised in Dunbar's Petition; and no notice to plead was required because Respondents' objections challenged the legal insufficiency of the Petition rather than its alleged facts. *Id.*, slip op. at 4-5, 2020 WL 283899, at *2.

Here, concerning verification, Respondents' preliminary objection in the nature of a demurrer cites Exhibit 2 to Dunbar's Petition, which is Respondent Durborow's July 25, 2018, answer to Dunbar's request to have his DC-300B form corrected to reflect his guilty but mentally ill plea. Respondents' Preliminary Objections ¶ 21. Respondent Durborow advised Dunbar that "[t]here is a sentence on your DC16E sentence summary, version 2 which reads 'court order should state Guilty But Mentally Ill.'" *Id.* To the extent that this assertion may be read as a denial by Respondents of Dunbar's averment in his Petition's facts that his records are incorrect, Respondents should have included a verification in their preliminary objections because Dunbar's DC16E sentence summary form is not of record in this matter. *See* Petition ¶¶ 4 & 8.

However, Respondents' preliminary objection in the nature of a demurrer is based on their position that the Department is not responsible as a matter of law for the contents of inmates' sentencing and commitment documents.

Respondents' Preliminary Objections at 6-7. As such, Respondents' demurrer does not depend on the disputed factual question of whether Dunbar's records are accurate. Therefore, Respondents' failure to include verification as to their position that Dunbar's records are, in fact, correct is not fatal to their legal argument. *See Gregor v. Commonwealth* (Pa. Cmwlth., No. 1381 C.D. 2016, filed June 13, 2017), slip op. at 4-5, 2017 WL 2544302, at *2 (lack of verification may be excused when preliminary objection is based on legal issues determinable from facts alleged in original pleading); *Spuck v. Centre Cnty.* (Pa. Cmwlth., No. 1077 C.D. 2011, filed Oct. 18, 2011), slip op. at 3-5, 2011 WL 10844942, at *2 (unreported) (same); *see also* Pa.R.A.P. 105(a) ("These rules shall be liberally construed to secure the just, speedy, and inexpensive determination of every matter to which they are applicable. . . .").

Because Respondents' legal argument that Dunbar fails to state a claim against them upon which relief can be granted may be resolved by recourse solely to the facts as asserted in Dunbar's Petition, specifically the Petition's assertion that the Department is responsible for the contents of his sentencing and commitment records, we overrule Dunbar's objection challenging Respondents' failure to verify their preliminary objections. Likewise, Respondents' preliminary objections did not require a notice to plead because Respondents have challenged the legal insufficiency of the Petition rather than its alleged facts. We therefore also overrule Dunbar's objection in that regard.

Dunbar's next objection alleges that Respondents violated our Rules of Appellate Procedure because the certificate of service for Respondents' preliminary objections indicates a mailing date of November 1, 2019, but according to Dunbar, the envelope in which he received the objections had a postmark of November 4,

2019. Dunbar’s Preliminary Objections ¶¶ 5-7. Dunbar points to Rule 121(b), which states that court filings “shall, concurrently with their filing,” be served on all other parties to the matter, and Rule 122(a), which states that the proof of service of court filings shall contain the date of service on those other parties. Pa.R.A.P. 121(b) & 122(a).

Our docket confirms that Respondents’ objections were filed with this Court via the Commonwealth’s judicial PACFile system on Friday, November 1, 2019, and that Dunbar filed his responsive preliminary objections twenty days later on November 19, 2019. Even if Dunbar is correct that Respondents’ objections were not mailed to him until Monday, November 4, 2019, and thus were not served on the same day as, or “concurrently with” their filing, he clearly received them and was not hindered in filing his responsive objections in a timely manner. Rule of Appellate Procedure 105 allows courts to liberally construe the appellate rules and excuse procedural missteps by a party, including with regard to timing (except for the timing of filing appeals), where there has been substantial compliance and no prejudice has resulted to the opposing party. Pa.R.A.P. 105. We do so here and therefore overrule Dunbar’s responsive preliminary objection in this regard.

Last, we address Dunbar’s preliminary objection asserting that this Court has a conflict of interest in this matter because of a pending lawsuit he filed against the Judges of this Court. Dunbar’s Preliminary Objections ¶¶ 10-11. By way of background, Dunbar filed a Petition with this Court on September 17, 2019, naming the Judges of this Court individually and alleging judicial improprieties in the disposition of another previous case in which he unsuccessfully challenged the Department’s prohibition on inmate possession of publications containing nudity,

obscene material, or sexually explicit content. *Dunbar v. [Hon. ____]*⁷ (Pa. Cmwlth., No. 519 M.D. 2019) (referencing *Dunbar v. Wetzel* (Pa. Cmwlth., No. 484 M.D. 2018, filed July 10, 2019), 2019 WL 2997467 (unreported)). By an October 11, 2019, order, we transferred the matter to the Supreme Court for consideration within that Court's superintendency powers. *Id.*

On December 26, 2019, the Supreme Court issued an order without an opinion denying Dunbar's Petition; the order subsequently became final when Dunbar failed to timely seek reconsideration. *See Dunbar v. [Hon. ____]* (Pa., No. 99 WM 2019, filed Dec. 26, 2019). Because Dunbar's assertion of a conflict on this Court's part in this matter was based on the pendency of his prior action against this Court, which has since been finally resolved via the Supreme Court's denial and dismissal, we overrule this objection.

B. Respondents' Preliminary Objections

Respondents first assert that Dunbar failed to exhaust his remedies under the Department's administrative grievance process. Respondents' Preliminary Objections at 3-5. Respondents' allegation implicates this Court's jurisdiction. *See Holloway v. Lehman*, 671 A.2d 1179, 1182 (Pa. Cmwlth. 1996). For exhaustion of administrative remedies requirements to apply, however, the available remedies must be adequate to address the petitioner's claims. *Id.* Here, Dunbar's claims assail the legality of his sentence and its supporting documentation. As neither of these matters is within the Department's authority or discretion, the Department's grievance procedure cannot provide an adequate remedy for Dunbar's

⁷ Dunbar's Petition specifically named this Court's Judges as respondents, but the Supreme Court ultimately ordered the Judges' names stricken from the caption. The caption styling used here replicates that used by the Supreme Court in its docket report for this case.

claims. *See Parran v. Rozum* (Pa. Cmwlth., No. 239 C.D. 2012, filed Jan. 4, 2013), slip op. at 5-6, 2013 WL 3942101, at *3 (unreported). Therefore, Respondents' objection in this regard is overruled.

Next, Respondents argue that the Petition fails to state a claim upon which relief can be granted. Respondents' Preliminary Objections at 5-9. They assert that, as Respondent Durborow explained in response to Dunbar's inquiries, the contents of sentencing documentation, including the DC-300B form, are provided by the sentencing court and that the Department has no control over or ability to alter that information. Petition Ex. 2. We agree.

The Department "is charged with faithfully implementing sentences imposed by the courts. As part of the executive branch, the Department lacks the power to adjudicate the legality of a sentence or to add or delete sentencing conditions." *McCray*, 872 A.2d at 1133. The DC-300B form, despite its "DC" designation, is generated by the sentencing court, and the Department cannot modify or disregard it. *See Spotz*, 972 A.2d at 131 ("Even though the [DC-300B form] was completed on the court's behalf by the clerk and was not signed by the sentencing judge, the Department did not err in relying on that form[.]") (quoting *Boyd*, 831 A.2d at 783 n.6)). If a DC-300B form has an alleged error, the inmate's remedy lies with the sentencing court "for clarification and/or correction of the sentence imposed," not with the Department. *See Commonwealth v. Heredia*, 97 A.3d 392, 395 (Pa. Super.), *appeal denied*, 104 A.3d 524 (Pa. 2014) (quoting *Commonwealth v. Perry*, 563 A.2d 511, 512 (Pa. Super. 1989)). Therefore, Dunbar has failed to state a claim against Respondents upon which relief can be granted concerning his DC-300B form.

We likewise reject Dunbar’s allegations that because the MDJ “dismissed” all of his charges in 1985, his entire criminal record on those charges is a forgery and his confinement is therefore illegal.⁸ Petition ¶¶ 10-20. As discussed above, the information contained in sentencing documents comes from the sentencing court; the Department relies on the documentation to carry out its duties, but is not authorized to amend or correct this information, adjudicate the legality of a sentence, or add or delete sentencing conditions. *See McCray*, 872 A.2d at 1133; *Heredia*, 97 A.3d at 395; *Spotz*, 972 A.2d at 131. Therefore, Dunbar has failed to state a claim against Respondents upon which relief can be granted concerning the legitimacy or accuracy of his criminal history and Respondents’ preliminary objection in the nature of a demurrer will be sustained.

IV. Conclusion

In light of the foregoing, Dunbar’s preliminary objections are overruled. Respondents’ preliminary objection asserting that Dunbar failed to exhaust his administrative remedies is also overruled. Respondents’ preliminary objection asserting that Dunbar has failed to state claims upon which relief can be granted is sustained, and the Petition is dismissed with prejudice.

⁸ Respondents also raised preliminary objections asserting that Dunbar failed to include writings and documents material to his claims and improperly lodged claims against Respondent Durborow, who is not a statewide officer. Respondents’ Preliminary Objections at 3-5. In light of our disposition on Respondents’ demurrer, we do not reach Respondents’ additional objections.

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v.	:	
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John E. Wetzel, Secretary for Pa. Dept.	:	
of Corrections, Centralized Records	:	
and Computation Unit, Mary Ann	:	
Durborow, Records Specialist 2,	:	No. 337 M.D. 2019
Respondents	:	

PER CURIAM

ORDER

AND NOW, this 30th day of August, 2021, the preliminary objections filed by Petitioner Gregory Dunbar to the preliminary objections of Respondents John E. Wetzel and Mary Ann Durborow are **OVERRULED**. Respondents' preliminary objection asserting failure to exhaust administrative remedies is **OVERRULED**. Respondents' preliminary objection in the nature of a demurrer is **SUSTAINED**. The Petition for Review is **DISMISSED** with prejudice.