

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher Hess, :
 :
 Petitioner :
 :
 v. : No. 26 M.D. 2007
 :
 :
 Pennsylvania Department : Submitted: May 2, 2008
 Of Corrections (Jeffrey Beard), and :
 Verizon of Pennsylvania, and :
 T-Netix Services, Inc., and T-Netix :
 Communications Services, Inc. :
 Respondents :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE M. HANNAH LEAVITT, Judge
 HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY SENIOR JUDGE COLINS**

FILED: June 10, 2008

We consider the preliminary objections in the nature of a demurrer filed by the Pennsylvania Department of Corrections (Jeffrey Beard) (DOC), Verizon of Pennsylvania, Inc. (Verizon), T-Netix Services, Inc. and T-Netix Telecommunications Services, Inc. (T-Netix) (collectively, Respondents) to the Second Amended Petition for Review¹ (Petition) filed by Christopher Hess (Hess), an inmate at SCI-Rockview. In his Petition, Hess alleges that a commission paid to the DOC by Verizon and T-Netix on the gross revenue generated by inmates' use of phone service violates certain rights granted by the Pennsylvania

¹ We will not relate the procedural history of this case as it is not relevant to our deliberations.

Constitution and the United States Constitution as well as certain federal statutes. We sustain the objections.

T-Netix and Verizon were providers of inmate telecommunications service to prisoners at SCI-Rockview.² As part of the agreement to provide this service, and in consideration for that opportunity, T-Netix and Verizon paid a 47% commission to the DOC. Hess claims that this payment is actually a tax, and, since only our General Assembly has the constitutional power to tax, the imposition and payment of the 47% commission by the DOC violates various provisions of the Pennsylvania Constitution and gives rise to violations of the United States Constitution and certain federal statutes.

In ruling on preliminary objections in the nature of a demurrer we must accept as true all well-plead allegations and all inferences that may be reasonably deduced from them. *Stone and Edwards Insurance Agency, Incorporated v. Department of Insurance*, 616 A.2d 1060 (Pa. Cmwlth. 1992). A demurrer will be sustained where the well-pled, relevant, material facts stated in the complaint clearly fail to state a claim upon which relief can be granted. *Raynovich v. Romanus*, 450 Pa. 391, 299 A.2d 301 (1973).³

In the first six pages of Hess' Petition, among the thirty-seven paragraphs that precede his seven Counts, we find the following well-plead facts: 1) the Petitioner is Christopher Hess, an inmate at SCI-Rockview; 2) the name of the governmental unit involved is the DOC; 3) T-Netix and Verizon were, at all times relevant, providers of inmate telephone service at SCI-Rockview; 4) T-Netix and Verizon paid a commission of 47% of gross revenues of the inmate telephone

² Hess has not joined the new provider.

³ As we consider only a question of law our review is plenary. *Skipworth by Williams v. Lead Industries Association, Incorporated*, 547 Pa. 224, 690 A.2d 171 (1997).

service to the DOC; 4) the inmate telephone system is the only access inmates have to telephone service; 5) Hess was a customer of the inmate service provided by T-Netix and Verizon.

In Count I of his petition, Hess alleges that the 47% commission paid to the DOC is paid on violation of Article III, Section 31 of the Pennsylvania Constitution. He claims that that provision of our Constitution prohibits the DOC from delegating power to T-Netix and Verizon “to raise revenue from petitioner’s telephone calls for the government of the Commonwealth.” Petition at 8. The relevant part of Section 31 of Article III is, “The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.” The DOC is not a “special commission, private corporation or association.” Article III, section 31 is not relevant to the facts of this matter. Count I of Hess’ Petition fails to state a claim upon which relief may be granted.

In Count II, Hess claims that the 47% commission paid to the DOC is paid in violation of Article VII, Section 1 of our Constitution which provides, “All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.” Hess avers that the 47% commission “is a Fee [sic] designed for one purpose, it is used to generate revenue for the government of the Commonwealth of Pennsylvania; it is therefore a Tax [sic], in violation of PA. [sic] Const. Art 8 § 1.” Petition at 10. Hess’ argument here fails on at least two levels. First, a “tax” is defined as “a monetary charge imposed by the government on persons, entities,

transactions, or property to yield public revenue,” Blacks Law Dictionary, 1496, Eighth Edition (2004), and as “a pecuniary charge imposed by a legislature or other public authority upon persons or property for public purposes.” Webster’s Third International Dictionary, 2345, Unabridged (2002). The commission paid by T-Netix and Verizon here is not “imposed” by the legislature or any part of our government, it is “a fee paid to an agent or employee for a particular transaction,” Blacks Law Dictionary, 286, Eighth Edition (2004), or a “fee paid to an agent or employee for transacting a piece of business or performing a service.” Webster’s Third International Dictionary, 457, Unabridged (2002). Second, assuming, for the sake of argument, that it is a tax, Hess does not explain how it is not uniform if, as he alleges, the same percentage is collected from all users of the inmate telephone service. Count II of Hess’ Petition fails to state a claim upon which relief can be granted.

In Count III of his Petition Hess alleges that the Respondents have violated the “Separation of Powers doctrine, violating PA. [sic] Const. Articles 2 § 1, 4 § 1, and 5 § 1, by respondents [sic] encroachment on the legislative branch.” Petition at 11. Hess does not tell us how, under the facts pled here, the Respondents have encroached upon the legislative branch or how that encroachment might violate our Constitution, and we decline to speculate. Count III of Hess’ Petition fails to state a claim upon which relief can be granted.

In an unnumbered Count headed “PETITIONER’S 42 U.S.C. § 1983 CLAIMS,” Hess alleges that the Respondents have violated his rights pursuant to the First, Fifth, and Fourteenth Amendments to the United States Constitution. Once more, this is all we are offered. Hess does not attempt to explain how these

violations occurred under the facts plead here. This unnumbered Count of Hess' Petition fails to state a claim upon which relief can be granted.

In Count IV of his Petition, Hess alleges that Respondents have deprived him of his right to free speech as guaranteed by the First Amendment to the United States Constitution. Again, Hess does not tell us how, under the facts as plead, this right has been violated and we again decline to speculate. Count IV of Hess' Petition fails to state a claim upon which relief can be granted.

Hess makes two allegations in his Count V. First, he alleges that he has been deprived of his right to due process under Fifth and Fourteenth Amendments to the United States Constitution. This is all he offers, he does not tell us how, under the facts he pleads, this might have happened and, once more, we must decline to speculate. His second allegation here is that the Respondents "violated the Pennsylvania Constitution as set forth in counts I, II, and III, as no such law, bill or statute has been passed by the General Assembly granting respondents legal right to raise revenue to fund the government of the commonwealth, to fund government operations. From Petitioner's telephone calls." [sic]. Petition at 13, 14. We are yet again handed a bare allegation of a constitutional violation with no argument or reasoning to tie it to the facts of this case. We will not speculate how those facts might apply to the General Assembly's failure to pass certain legislation and result in a constitutional violation. Count V of Hess' Petition fails to state a claim upon which relief can be granted.

In Count VI, Hess alleges that his rights under the Fourteenth Amendment to the United States Constitution have been violated because "respondents place unequal burden [sic] upon petitioner to raise revenue from his

telephone calls, that it does not demand of other Pennsylvania telephone customer's [sic] similarly situated." Petition at 15, 16. However, one of the facts plead by Hess is that the inmate telephone system is the only access inmates have to telephone service. If we accept this as true, then all inmates are being treated equally as they are "other Pennsylvania telephone customers similarly situated." Count VI of Hess' Petition fails to state a claim upon which relief can be granted.

In Count VII of Hess' Petition, he alleges that the Respondents violated various crimes sections of the United States Code. In particular, he cites 18 U.S.C. § 1951, "Interference with commerce by threats or violence," 18 U.S.C. § 1962, "Prohibited activities" (It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt ...), and 18 U.S.C. § 1957, "Engaging in monetary transactions in property derived from specified unlawful activity." Based on the facts as pled here we are unable to understand how the Petitioners might have committed violations of these or any criminal statutes, state or federal. Count VII of Hess' Petition fails to state a claim upon which relief can be granted.

Accordingly, the preliminary objections filed by the Department of Corrections, Verizon Pennsylvania, Inc., Netix, Inc. and T-Netix Telecommunications Services, Inc., are sustained, and the Second Amended Petition for Review is dismissed, with prejudice.

JAMES GARDNER COLINS, Senior Judge

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Petitioner	:	
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Pennsylvania Department	:	
Of Corrections (Jeffrey Beard), and	:	
Verizon of Pennsylvania, and	:	
T-Netix Services, Inc., and T-Netix	:	
Communications Services, Inc.	:	
Respondents	:	

ORDER

AND NOW, this 10th day of June, 2008, the preliminary objections filed by the Department of Corrections, Verizon of Pennsylvania, Inc., T-Netix, Inc. and T-Netix Telecommunications Services, Inc., are sustained, and the Second Amended Petition for Review is dismissed, with prejudice.

JAMES GARDNER COLINS, Senior Judge