IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jerald Sturgis,	:	
Petitioner	:	
	:	
v.	:	No. 322 M.D. 2007
	:	Submitted: December 21, 2007
John/Jane Doe, Secretary, DOC, et al.,	:	
Respondents	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY FILED: February 5, 2008

Presently before this Court are the preliminary objections of the Department of Corrections and the Secretary of the Department (hereafter collectively referred to as the Department) in response to a pro se "PETITION FOR WRIT OF HABEAS CORPUS" filed by Jerald Sturgis (Petitioner) under this Court's original jurisdiction.[1]

[1] By order dated July 12, 2007, we directed that Petitioner's petition be treated as a petition for review addressed to this Court's original jurisdiction. Furthermore, we treat said petition as an action in mandamus seeking to compel the Department to properly calculate and/or correct Petitioner's sentence.

Petitioner was originally charged with aggravated assault in 1985. Petitioner pled guilty to this charge and was sentenced by the Court of Common Pleas of Philadelphia County (trial court) to a term of incarceration of six years to six years under the now-repealed Youthful Offenders Act.[2] Petitioner's sentence was vacated and he was re-sentenced by the trial court on March 3, 1987, to a term of incarceration of not less than five years nor more than five years.[3] More than two years later, by letter dated July 25, 1989, the Department sent a letter to the trial court asking for clarification of Petitioner's sentence. Specifically, the Department noted that Section 9756(b) of the Sentencing Code, 42 Pa. C.S. §9756(b), requires that a "court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed." The Department also noted that it was interpreting the trial court's sentence as a five-to-ten-year sentence, i.e., a minimum sentence of five years and a maximum of ten years in accordance with Section 9756(b) of the Sentencing Code. In other words, since the trial court ordered that Petitioner be confined for a minimum of five years, the Department indicated that it presumed the trial court intended to impose a maximum sentence of ten years. The Department further indicated that said calculation would be imposed unless the trial court informed it otherwise.

The trial court did not respond to the Department's letter requesting clarification. At the expiration of his minimum sentence of five years, Petitioner was released on parole. Petitioner was subsequently arrested and convicted on new criminal

[2] Act of April 28, 1887, P.L. 63, as amended, 61 P.S. §§481-486, repealed by Act of December 11, 1986, P.L. 1521, effective in sixty days.

[3] The record is unclear as to the reasons why the trial court vacated Petitioner's original sentence and re-sentenced him.

charges in the nature of third-degree murder and aggravated assault in August of 1995. Petitioner was sentenced to a term of incarceration of fifteen to thirty years on these new charges. Additionally, as a result of his conviction on new criminal charges, the Pennsylvania Board of Probation and Parole recommitted Petitioner as a convicted parole violator to serve the remainder of his term. As a result of the Department's calculation of Petitioner's original sentence as a five-to-ten-year sentence, the Department determined that Petitioner had five years still remaining on that sentence.

Several years later, Petitioner attempted to challenge the Department's calculation of his original sentence as a five-year to ten-year sentence through the Department's grievance system, but these attempts failed. Petitioner also filed a federal civil rights action against the Department under 42 U.S.C. §1983 with the United States District Court for the Middle District of Pennsylvania. However, the United States District Court dismissed this action without prejudice to Petitioner to file a petition for writ of habeas corpus. Petitioner thereafter filed the present petition with this Court.

In this petition, Petitioner alleged that the Department violated his right to due process by improperly and illegally recalculating his original sentence as imposed by the trial court, i.e., from a flat five year sentence to a five-to-ten-year sentence. Petitioner noted throughout his petition that he was not challenging his original sentence imposed by the trial court. Rather, Petitioner specifically indicated that he was only challenging the actions of the Department in unilaterally modifying his original sentence. Petitioner noted that the imposition of this improper sentence by the Department has resulted in an error in calculating the duration of his sentence relating to the 1995 criminal charges. While Petitioner admitted that he has completed this improper sentence by serving the ten years, he sought relief from this Court in the nature of an order directing that the sentence as calculated by the Department be

vacated.[4]

The Department filed an initial preliminary objection alleging a lack of service. By order dated August 17, 2007, we directed Petitioner to effectuate proper service within fourteen days. Petitioner thereafter properly completed service of his petition. By order dated August 29, 2007, we overruled the Department's preliminary objection in this regard. The Department thereafter filed new preliminary objections alleging lack of jurisdiction and suggestion of mootness, as well as a preliminary objection in the nature of a demurrer.

With respect to jurisdiction, the Department alleges that this Court does not have jurisdiction to vacate a criminal sentence imposed by the trial court. With respect to the suggestion of mootness, the Department simply indicates that Petitioner has already completed serving the sentence at issue. With respect to the demurrer, the Department notes that the use of clarification letters to the trial court has been approved by this Court. See Barndt v. Pennsylvania Department of Corrections, 902 A.2d 589 (Pa. Cmwlth. 2006). The Department alleges that it followed the trial court's intentions since the trial court never advised it as to any disagreement with its calculations.

In ruling on preliminary objections, this Court must accept as true all well-pleaded facts and all inferences reasonably deducible therefrom. Stone and Edwards Insurance Agency, Inc. v. Department of Insurance, 616 A.2d 1060 (Pa. Cmwlth. 1992).

[4] A writ of mandamus is an extraordinary remedy which seeks to compel official performance of a ministerial act or a mandatory duty, as opposed to a discretionary act. Rosario v. Beard, 920 A.2d 931 (Pa. Cmwlth. 2007); Griffin v. Department of Corrections, 862 A.2d 152 (Pa. Cmwlth. 2004), affirmed, 590 Pa. 651, 915 A.2d 639 (2007). A writ of mandamus may be issued only where there is a clear legal right to relief in the plaintiff, a corresponding duty in the defendant and a lack of any other appropriate and adequate remedy. McGill v. Pennsylvania Department of Health, Office of Drug and Alcohol Programs, 758 A.2d 268 (Pa. Cmwlth. 2000).

"However, we need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion." Myers v. Ridge, 712 A.2d 791, 794 (Pa. Cmwlth. 1998), petition for allowance of appeal denied, 560 Pa. 677, 742 A.2d 173 (1999). 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. Envirotest Partners v. Department of Transportation, 664 A.2d 208 (Pa. Cmwlth. 1995).

We begin with the Department's first preliminary objection alleging that this Court lacks jurisdiction to vacate a criminal sentence imposed by the trial court. The Department is correct in this regard. See Section 761(a)(1)(i) of the Judicial Code, 42 Pa. C.S. §761(a)(1)(i) (Commonwealth Court has original jurisdiction of all civil actions against the Commonwealth of Pennsylvania, except actions "in the nature of applications for a writ of habeas corpus"); Lee v. Pennsylvania Board of Probation and Parole, 885 A.2d 634 (Pa. Cmwlth. 2005). However, Petitioner is not asking this Court to vacate his criminal sentence. Rather, Petitioner is asking this Court to direct the Department to correct its unilateral modification of the trial court's sentencing order. Hence, Petitioner's action falls within our original jurisdiction and the Department's preliminary objection in this regard must be overruled.

Next, we will address the Department's preliminary objection in the nature of a demurrer alleging that it acted properly in calculating Petitioner's sentence as a five-to-ten-year sentence after failing to receive a response from the trial court with respect to its request for clarification. In its brief to this Court, the Department correctly notes that the use of such clarification letters to the trial court has been a long running practice which was recently approved by this Court. Barndt. In Barndt, we rejected an

argument that the use of such letters violated an inmate's right to due process and an opportunity to be heard.[5] However, we did specifically indicate in Barndt that the Department does not impose sentences.

We expounded upon this latter principle in Oakman v. Department of Corrections, 903 A.2d 106 (Pa. Cmwlth. 2006), wherein we stated that "[t]he Department is an executive branch agency that 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." Oakman, 903 A.2d at 109 (citing McCray v. Department of Corrections, 582 Pa. 440, 450, 872 A.2d 1127, 1133 (2005)).

In other words, in certain instances, we have recognized and approved of the Department's use of clarification letters to the trial court, presumably at times questioning the legality of a sentencing order. However, at the same time, we have held that the Department has no authority to question the legality of a sentence.[6] For purposes of the present case, these divergent views preclude us from saying with certainty that the law will not permit recovery herein. Thus, we must overrule the Department's preliminary objection in the nature of a demurrer.

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[5] We noted in Barndt that where a trial court's sentencing order is illegal on its face, due process and an opportunity to be heard is afforded to an inmate seeking credit in the form of a nunc pro tunc habeas corpus petition to the sentencing court and, if denied, through further appeal therefrom. We further noted in Barndt that where a trial court's sentencing order is legal on its face, due process and an opportunity to be heard is afforded since an inmate may petition this Court in our original jurisdiction seeking a writ of mandamus to compel the Department to properly compute a sentence.

[6] In either case, we stress that the Department does not and cannot point to any authority permitting it to assume and/or modify the terms of a sentencing order issued by the trial court.

Finally, we address the Department's preliminary objection regarding mootness. The Department correctly notes in its brief to this Court in support of its preliminary objections that the mootness doctrine requires an actual case or controversy to be present at all stages of review. See Public Defender's Office of Venango County v. Venango County Court of Common Pleas, 586 Pa. 317, 893 A.2d 1275 (2006). The Supreme Court further addressed an exception to the mootness doctrine in Public Defender's Office of Venango County when an issue is "capable of repetition yet likely to evade review." Public Defender's Office of Venango County, 586 Pa. at 325, 893 A.2d at 1279 (citing Sierra Club v. Pennsylvania Public Utility Commission, 702 A.2d 1131, 1135 (Pa. Cmwlth. 1997), affirmed, 557 Pa. 11, 731 A.2d 133 (1999)).

In the present case, while Petitioner has admittedly completed serving the entire ten year sentence as improperly calculated by the Department, we believe that the Department's actions in this regard, i.e., modifying/recalculating a trial court's sentence without prior clarification from said trial court, are capable of repetition and evading review. Hence, we must likewise overrule the Department's preliminary objection suggesting mootness.

JOSEPH F. McCLOSKEY, Senior Judge

President Judge Leadbetter concurs in the result only.

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O R D E R

AND NOW, this 5th day of February, 2008, the preliminary objections filed on behalf of the Department of Corrections and the Secretary of the Department are hereby overruled. The Department of Corrections and the Secretary are directed to file an answer to the petition of Jerald Sturgis within thirty (30) days of the date of this order.

JOSEPH F. McCLOSKEY, Senior Judge