

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Seifullah Abdul-Salaam,	:	
Petitioner	:	
	:	
v.	:	No. 346 M.D. 2010
	:	SUBMITTED: November 5, 2010
Pennsylvania Dept. of Corrections	:	
and Secretary Jeffrey Beard, SCI-	:	
Greene and Superintendent Louis	:	
Folino and Business Office Manager	:	
Jean W. Scott, Cumberland County	:	
Clerk of Court Dennis Lebo,	:	
Cumberland County Adult Probation	:	
and Parole Collection Enforcement	:	
Unit and James B. Van Kirk, and	:	
other unknown actors,	:	
Respondents	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: December 23, 2010

Before us for disposition in our original jurisdiction are the preliminary objections of Respondents, the Pennsylvania Department of Corrections (DOC) and its officials (collectively, DOC Respondents), to the petition for review of *pro se* Petitioner Seifullah Abdul-Salaam (Petitioner) requesting a temporary order enjoining deductions from his inmate account

pending resolution of this litigation, a final judgment terminating the deductions, an order directing the return of all non-statutory funds already deducted and such other relief as this Court deems just and proper. In his petition, Petitioner essentially challenges the propriety of the DOC's deduction of funds from his inmate account and the Cumberland County Clerk of Court's calculation of the proper amounts due and owing. Also before us for disposition is Petitioner's October 4, 2010 application for relief related to the Cumberland County Respondents' failure to respond to the petition for review.¹ In the application, Petitioner requests that this Court deem as admitted certain averments in the petition concerning the County Respondents.

After careful consideration, we conclude that the DOC was authorized to make the deductions as calculated by the Clerk. As for the exact amount of the deductions, however, we conclude that Petitioner's challenge belongs in the common pleas court. Significantly, the DOC is not an indispensable party to any challenge to the Clerk's calculations. Further, having no jurisdiction over the County Respondents,² we conclude that we may not consider Petitioner's application. For the reasons that follow, therefore, we sustain the preliminary objections of the DOC Respondents, dismiss the petition for review as to those Respondents only and transfer the remainder of the case concerning the County

¹ Petitioner filed an answer to the preliminary objections and also a motion to preclude the remaining respondents from answering. This Court denied Petitioner's motion, noting that the petition for review was not served on the County Respondents. Upon proof of service of the petition on them, this Court ordered them to file an answer or otherwise plead within thirty days of our order. In light of the County Respondents failure to respond to the petition, this Court in an October 28, 2010 order directed that Petitioner's application be decided with the DOC Respondents' preliminary objections.

² Section 761 of the Judicial Code, 42 Pa. C.S. §761.

Respondents, including Petitioner's October 4, 2010 application, to the common pleas court.³

Petitioner made the following averments in his petition.⁴ Petitioner is incarcerated at SCI-Greene serving time for convictions imposed by the Court of Common Pleas of Cumberland County. In November 2000, the DOC began to deduct funds from his inmate account. In an attempt to stop the deductions, Petitioner informed SCI-Greene's business office manager that there was no *valid* order authorizing the deductions. When Petitioner tried to ascertain the basis for the deductions, the manager told him only that the office had "original documents with seals" and that the deductions would continue until County authorities notified her otherwise. Petitioner subsequently learned that the supervisor of collection enforcement for the Adult Probation and Parole Department of Cumberland County had sent a November 2000 request to SCI-Greene asking that it withhold funds from Petitioner's inmate account consistent with computer printouts enumerating the costs owed for cases docketed at 1989-00527, 1994-02078 and 1994-01499, and remit those amounts to the Cumberland County Clerk of Courts.

In December 2009, Petitioner contacted the Clerk and requested copies of any orders specifying the costs owed and authorization for the

³ Section 5103 of the Judicial Code, 42 Pa. C.S. §5103 ("Transfer of erroneously filed matters").

⁴ In ruling upon preliminary objections in the nature of a demurrer, the Court must accept as true all well-pled facts and all reasonable inferences therefrom, and it must determine whether the facts pled are legally sufficient to permit the action to continue. *Altoona Housing Auth. v. City of Altoona*, 785 A.2d 1047 (Pa. Cmwlth. 2001). In that a demurrer results in the dismissal of a suit, it should be sustained only in cases that are clear and free from doubt and only where it appears with certainty that the law permits no recovery under the allegations pleaded.

deductions. In response, the Clerk sent Petitioner three formal sentencing forms and the alleged costs due under each docket number: 1989-00527 - \$361.70;⁵ 1994-02078 - \$517.78; and 1994-01499 - \$27,110.55. Petitioner, however, alleges that upon his commitment, his total costs, fines and restitution were \$4311.40 under docket no. 1994-01499 and that, to date, his DC-300B court commitment form shows only that amount and does not reflect any other sentencing docket number or cost adjustment.⁶

In April 2010, Petitioner filed the petition for review at issue, claiming that 1) the deductions are unlawful under what is commonly referred to as Act 84⁷ because the sentencing court never imposed non-statutory or waivable court costs in specific dollar amounts and did not indicate the source of the costs; 2) it was illegal for the DOC to set up his account for deductions in excess of the amounts listed on his DC-300B court commitment forms; 3) the deductions violate his due process rights; and, 4) Respondents' actions and inactions constitute a violation of the prohibition against cruel and unusual punishment. In response, the DOC Respondents filed preliminary objections in the nature of a demurrer asserting that Petitioner is not entitled to any relief from them. We turn now to Petitioner's first argument.

Petitioner argues the deductions are unlawful because the sentencing court never imposed non-statutory or waivable court costs in specific dollar amounts and did not indicate the source of the costs. He alleges that he was never

⁵ The DOC Respondents represent in their brief to this Court that the court costs for docket number 1989-00527, \$361.70, were paid in full on February 21, 2002. Respondents' Brief at 6.

⁶ Petitioner alleges that he filed an unsuccessful December 2009 grievance regarding the deductions.

⁷ Act of June 18, 1998, P.L. 640, which amended Section 9728(b)(5) of the Sentencing Code, 42 Pa. C.S. § 9728(b)(5).

provided with notice that such costs would be imposed, never notified of any judicial proceedings during which the propriety of the imposition of such costs were litigated and never received a written order stating the costs owed or when the deductions would commence.

Moreover, he asserts that the DOC should not be able to rely upon his DC-300B court commitment forms because they supersede the common pleas court's intent and Act 84 does not sanction the use of such forms. He contends that the DOC's policy DC-ADM 005, "Collection of Inmate Debts," lacks the force of law and that the use of those forms emanates solely from that policy. Specifically with regard to those forms, Petitioner maintains that it was illegal for the DOC to set up his account for deductions in excess of the amounts listed on his commitment form for docket No. 1994-01499, noting that it reflected only costs of \$4311.40, but that the DOC is now attempting to collect \$27,110.55.

In response, the DOC Respondents point out that the DOC has authority to collect costs under Act 84 where there is a court order imposing such costs. *Spotz v. Commonwealth*, 972 A.2d 125 (Pa. Cmwlth. 2009). They further note that Act 84 does not require prior court authorization as a threshold condition before funds can be deducted from an inmate's account. *George v. Beard*, 824 A.2d 393 (Pa. Cmwlth. 2003). To that end, the DOC Respondents maintain that they have two court orders directing Petitioner to pay the costs of prosecution and one ordering him to pay court costs. They maintain that Petitioner acknowledges in his petition the existence of these orders and does not dispute their authenticity. Petition for Review, ¶¶ 7 and 8.

Further, in response to Petitioner’s contention that only deductions under what is commonly known as Act 85,⁸ which are non-waivable statutory costs, can be made unless a sentencing order expressly contains the words “waivable or non-statutory costs” or specifies a dollar amount, the DOC Respondents point out that this Court has never held that a sentencing order must include such language or information. They note this Court’s recent holding that where costs were ordered, the clerk could perform the ministerial calculations of those costs. *Richardson v. Pa. Dep’t of Corr.*, 991 A.2d 394 (Pa. Cmwlth. 2010). In addition, they maintain that *Commonwealth v. Larsen*, 682 A.2d 783 (Pa. Super. 1996), is not contrary to *Richardson* because *Larsen* does not require a formal court order specifying the amount of costs as a prerequisite to paying such costs. They maintain that the Superior Court in that case merely expressed its approval of the sentencing judge’s issuance of an order specifying the amount of costs.

Moreover, the DOC Respondents reject Petitioner’s contention that his sentencing orders only authorize the imposition of Act 85 costs. They allege that the phrase “costs of prosecution” clearly encompasses more than Act 85 monies, which do not go to court costs. The DOC Respondents maintain that if Petitioner has problems with the Clerk’s calculation of costs, then he must take those challenges to the Clerk and not to the DOC.

We note that there is no real factual dispute here that a sentencing court entered orders imposing costs; the dispute centers on the validity of those

⁸ Section 1101(a)(1) of the Crime Victims Act provides that “[a] person who pleads guilty or nolo contendere or who is convicted of a crime shall, in addition to costs imposed under 42 Pa. C.S. §3571(c) . . . pay costs of at least \$60 and may be sentenced to pay additional costs in an amount up to the statutory maximum monetary penalty for the offense committed.” Act of November 24, 1998, P.L. 882, *as amended*, 18 P.S. §11.1101(a)(1).

orders in that no amounts were specified and no sources indicated. With regard to the adequacy and specificity of the orders in this matter, we note that this Court in *Richardson* held that, even in the absence of a court order, a clerk could impose fees on an inmate that were specifically mandated by statute. Additionally we noted that “[w]hen the judge has authorized the imposition of costs, the [DOC] may collect those costs from a prisoner without physical possession of the court order; a form signed by the Clerk of Court is sufficient authority.” *Id.* at 396-97 [citing *Herrschaft v. Dep’t of Corr.*, 949 A.2d 976 (Pa. Cmwlth. 2008), *aff’d*, 600 Pa. 365, 966 A.2d 544 (2009)].

With regard to the amount of costs, we further noted in *Richardson* that “the practice of a judge ordering a defendant to pay costs, and leaving the assessment of the amount to the clerk appears to be a common one” and that “the text of Act 84 itself does not specify who must determine the amount of the costs.” *Richardson*, 991 A.2d at 397. We also pointed out that “even when the amount of costs has been determined by a clerk, the defendant still has the ability to challenge the amount.” *Id.* See also *Commonwealth v. Williams*, 909 A.2d 419 (Pa. Cmwlth. 2006) (inmate’s challenge to clerk’s assignment of costs should be filed in common pleas court); *Commonwealth v. Parella*, 834 A.2d 1253 (Pa. Cmwlth. 2003) (inmate’s complaint regarding Act 84 deductions should be filed in common pleas court where he seeks to remove financial obligation assigned to him). Accordingly, with regard to the specific amounts being deducted, we conclude that Petitioner must make specific challenges to the Clerk’s calculations in the common pleas court.

As for the DOC’s reliance on the court commitment forms, we note that Act 84 authorizes the DOC “to make monetary deductions from the inmate

personal accounts.” 42 Pa. C.S. §9728(b)(5). In addition, it relegates to the DOC the authority to develop guidelines for executing its responsibilities. Policy DC-ADM 005 resulted and we decline to disturb the DOC’s use of the court commitment forms to carry out its obligations. *See Richardson*.

Petitioner additionally argues that the deductions violate his due process rights in that Respondents’ actions and inactions constitute a *sua sponte* imposition of cost and a taking of property. The DOC Respondents reject Petitioner’s due process claim, maintaining that the sentencing hearing provides all the process that an inmate is due prior to the initiation of Act 84 deductions. *Buck v. Beard*, 583 Pa. 431, 879 A.2d 157 (2005). It contends, therefore, that it was authorized to make the deductions. Again, we agree that the DOC was authorized to make the deductions. The resolution of Petitioner’s challenge to the amount of those deductions must occur in the common pleas court.

Finally, Petitioner maintains that Respondents’ actions and inactions constitute a violation of the prohibition against cruel and unusual punishment, primarily because their actions were an abuse of discretion and manifested a deliberate indifference to his property interest. Specifically, he maintains that the fact that he has not paid “exorbitant” costs should not vitiate Respondents’ intent and the hardship that he has endured fighting for his property interest.

In response, the DOC contends that it is not a proper party for Petitioner’s claim that the underlying obligation to pay court costs is cruel and unusual because it had no role in determining or imposing his criminal sentence. In order to terminate the obligation to pay such costs, it alleges that Petitioner would have to bring a direct appeal from the criminal sentence or proceed under

the Post-Conviction Relief Act.⁹ *Neely v. Dep't of Corr.*, 838 A.2d 16 (Pa. Cmwlth. 2003). It further maintains that he could not challenge the substance of his criminal sentence by pursuing an injunction against the DOC. *Harding v. Stickman*, 823 A.2d 1110 (Pa. Cmwlth. 2003).

Moreover, the DOC emphasizes that in order to state a *prima facie* claim of cruel and unusual punishment, Petitioner would have had to allege that a prison official was deliberately indifferent such that he “[knew] of and disregard[ed] an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). To that end, the DOC points out that Petitioner did not allege that the deductions endangered his health or safety in any way or that any prison official knew of or disregarded any risk to his health or safety.

In any event, the DOC Respondents point out that this Court has already determined that Act 84 deductions do not constitute cruel and unusual punishment. *Neely*. They acknowledge that the deductions are penal sanctions, *Fordyce v. Clerk of Courts*, 869 A.2d 1049 (Pa. Cmwlth. 2005), but emphasize that Act 84 deductions do not constitute punishment and are merely a procedural mechanism by which to facilitate the enforcement of an inmate’s criminal sentence. *Commonwealth v. Lyons*, 830 A.2d 663 (Pa. Cmwlth. 2003). Finally, the DOC points out that Petitioner does not allege that his sentence to pay costs is a disproportionate one.

We determine that, under the facts alleged, Petitioner has failed to state a claim that the DOC Respondents’ actions or inactions constitute cruel and unusual punishment. As per the facts alleged, the DOC Respondents relied upon the relevant paperwork from the County Respondents in making deductions from

⁹ Act of May 13, 1982, P.L. 417, *as amended*, 42 Pa. C.S. §§ 9541-46.

Petitioner's inmate account. The facts pled simply do not indicate a deliberate indifference on the part of the DOC Respondents to Petitioner's property interest.

For the above reasons, therefore, we sustain the preliminary objections of the DOC Respondents, dismiss the petition for review as to those Respondents only and transfer the remainder of the case concerning the County Respondents, including Petitioner's October 4, 2010 application for relief related to the County Respondents' failure to respond, to the Court of Common Pleas of Cumberland County.

BONNIE BRIGANCE LEADBETTER,
President Judge

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other unknown actors,	:	
Respondents	:	

ORDER

AND NOW, this 23rd day of December 2010, the DOC Respondents' preliminary objections in the nature of a demurrer are hereby SUSTAINED and Petitioner's petition for review as to the DOC Respondents only is DISMISSED. In addition, the remainder of the case concerning the County Respondents, including Petitioner's October 4, 2010 application for relief related to the County Respondents' failure to respond, is hereby TRANSFERRED to the Court of Common Pleas of Cumberland County.

Jurisdiction relinquished.

BONNIE BRIGANCE LEADBETTER,
President Judge