IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Hughes – Similarly Situated Persons,	:	
Petitioner	:	
	:	
v.	:	No. 594 M.D. 2009
	:	Submitted: June 4, 2010
Jeffery Beard & Penna. Dept. of Corrections,	:	
Respondents	:	

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED:** October 6, 2010

Presently before the Court for disposition are the preliminary objections of Respondents the Pennsylvania Department of Corrections and former Secretary of the Department of Corrections Jeffrey A. Beard (collectively, DOC). DOC's preliminary objections are directed to most of the claims set forth in the original jurisdiction Amended Petition for Review (Amended Petition) of Petitioner Robert Hughes (Hughes), currently an inmate in the State Correctional Institution at Albion (Albion). In his Amended Petition, Hughes challenges several unrelated actions by DOC.

For the reasons that follow, we will sustain in part and overrule in part DOC's preliminary objections and direct Hughes to file a second amended petition for review that conforms to the Court's rulings on DOC's preliminary objections.

I. BACKGROUND[1]

A. Preliminary Objections

Hughes organized the allegations in his Amended Petition by headings. Each of the five (5) headings purports to set forth a separate actionable claim of wrongdoing by DOC. The alleged wrongdoings include the following: (1) escrowing prisoner funds to pay travel expenses upon release; (2) deduction of a tobacco tax from inmate funds; (3) assessment of a $0.75 administrative fee for cable television service; (4) misrepresentation, shoddy workmanship, and/or anti-competitive conduct with respect to prescription eyeglasses; and (5) retaliation and/or arbitrary and capricious misconduct charges.

[1] In ruling on preliminary objections, we accept as true all well-pleaded material allegations in the petition for review and any reasonable inferences that we may draw from the averments. *Meier v. Maleski*, 648 A.2d 595 (Pa. Cmwlth. 1994). The Court, however, is not bound by legal conclusions encompassed in the petition for review, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Id.* We may sustain preliminary objections only when the law makes clear that the petitioner cannot succeed on his claim, and we must resolve any doubt in favor of the petitioner. *Id.* We review preliminary objections in the nature of a demurrer under these guidelines and may sustain a demurrer only when a petitioner has failed to state a claim for which relief may be granted. *Clark v. Beard*, 918 A.2d 155 (Pa. Cmwlth. 2007).

In its preliminary objections, DOC challenges for failure to state a claim upon which relief can be granted (or *demurrer*) (Pa. R.C.P. No. 1028(a)(4)) every claim, with the exception of the challenge to the assessment of the tobacco tax.[2] DOC also challenges this Court's subject matter jurisdiction (Pa. R.C.P. No. 1028(a)(1)) over DOC's misconduct determinations. Finally, DOC claims that the Amended Petition fails to conform with the pleading requirement of Rule 1022 of the Pennsylvania Rules of Civil Procedure—*i.e.*, it is not "divided into paragraphs numbered consecutively."[3] *See* Pa. R.C.P. No. 1028(a)(2) (authorizing preliminary objection for failure to comply with rule of court).

B. Allegations in the Amended Petition

1. Escrow Account for Post-Release Transportation Costs

On February 2, 2008, DOC removed $85.00 from Hughes' inmate account and placed those funds in a separate escrow account. The alleged purpose of the separate escrow account is to provide money to pay for Hughes' transportation from Albion upon his release. In taking this action, DOC relies on a

[2] Because the substance of the claim is not at issue in the pending preliminary objections, a recitation of the facts Hughes alleges in support of that claim is unnecessary.

[3] As to this objection, we will refer to Rule 1513(c) of the Pennsylvania Rules of Appellate Procedure, which similarly requires the petition for review to "be divided into consecutively numbered paragraphs."

"Fiscal Administration" policy designated as 3.1.1. Once these funds are removed and escrowed, they are no longer available to the inmate for other purposes.

Hughes claims that because DOC placed the funds in escrow, he experienced several instances where he could not make purchases for "basic items" in the commissary. Hughes contends that although the General Assembly has authorized DOC to make certain deductions from an inmate's account, no such authority exists to permit DOC to place funds in escrow for the purpose of post-release transportation. He seeks injunctive relief, prohibiting DOC from continuing this policy, and monetary damages that appear to include the $75.00 that DOC withdrew from Hughes' inmate account along with some sort of multiplier, for a total damages claim of $1,530.00. Hughes also seeks an accounting of the escrowed funds.

2. Administrative Fee for Cable Television Service

Hughes avers that in order for inmates to receive cable service, DOC requires them to sign a contract. DOC charges inmates a monthly administrative fee of $0.75 for cable service. According to Hughes, the contract that he signed does not include any language by which he agreed to pay a monthly service fee to DOC, nor does it allow DOC to deduct that fee from his inmate account. Hughes rebuts any claim to the contrary by pointing out a provision in the agreement to the effect that the agreement is not a contract between Hughes and DOC.

Hughes avers that he filed a grievance regarding this charge and pursued the grievance to final review, but he does not indicate the outcome of this final review. Hughes asks this Court to enter an order directing DOC to repay the monthly service charge all prisoners have paid over the last two years, enjoining DOC from assessing the service charge, and directing DOC to account for how it spent the collected service charges.

3. Prescription Eyeglass Claim

Hughes avers that he purchased prescription eyeglasses through DOC. He claims that DOC led him to believe that a third party—"Boulevard Boutique"—provided the eyeglasses.

Sometime around September 2009, while Hughes was cleaning the lenses, the frames to the eyeglasses broke. When Hughes sought to have someone within DOC's system repair the glasses, he was told that DOC does not repair eyeglasses. During the course of a subsequent eye examination and appointment to select replacement frames, an unnamed member of the medical staff urged Hughes to purchase plastic, not wire, frames. The staff member told Hughes that the wire

frames were "junk" and that they were made by female inmates at the State Correctional Institution at Cambria.[4]

Hughes claims that DOC's conduct with respect to the broken eyeglasses violated the Unfair Trade Practices and Consumer Protection Act,[5] which he claims prohibits the sale of shoddy products and acts of deception. Hughes also claims that DOC's sale of the glasses to him violated the Lanham Act,[6] which relates to false or deceptive advertising. Hughes also contends that he requested permission to buy eyeglasses from an entity other than DOC, but DOC refused that request. He requests that this Court enter an order (1) directing DOC to (a) repay him $47.00 he paid for his broken glasses, (b) disclose the origin of the glasses DOC sells to inmates, (c) request bids from private vendors to make third-party vendor glasses available to inmates or alternatively to request an anti-trust waiver; and (2) enjoining DOC from manufacturing and selling products that are shoddy in workmanship and contrary to industry standards.

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[4] Hughes filed a grievance on October 23, 2009, over the broken eyeglasses, but DOC rejected the grievance.

[5] Act of December 17, 1968, P.L. 1224, *as amended*, 73 P.S. §§ 201-1 to -9.3 (the UTPA).

[6] We view Hughes' averments, suggesting that DOC told him that an entity called "Boulevard Boutiques" made the glasses, as asserting a claim that DOC's failure to disclose that other inmates in the state correctional system actually made the glasses rather than a third party constituted a violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Section 43(a)
(Footnote continued on next page…)

4. Retaliatory and/or Arbitrary and Capricious Misconduct Reports

Hughes has filed several grievances against medical staff at Albion. During the course of a medical appointment, Hughes heard a corrections officer refer to Hughes as someone who had filed grievances. Two days later, Hughes claims that the same corrections officer initiated a two-week campaign of issuing five misconduct reports against Hughes. Hughes asserts that he did not violate any rules or engage in any conduct that would give rise to the misconduct reports.

After the officer filed the first two misconduct reports, Hughes filed a grievance against the officer, asserting that the officer was retaliating against him for filing grievances. Hughes states that although it is difficult to prove that an employee of a correctional institution has acted in a retaliatory fashion against an inmate, in this case, the corrections officer issued the misconduct reports contrary to DOC policy. Hughes avers that the officer issued the five misconduct reports as a means of retaliating against him based upon Hughes' failure to obtain medical treatment and failure to sign a medical refusal form. He claims that any requirement that he accept medical treatment is unconstitutional. Further, while he acknowledges a DOC policy requiring inmates who refuse medical treatment to

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(continued…)

of the Lanham Act prohibits advertising that may mislead a purchaser into believing that the origin of a product is something other than what is true.

sign a waiver form, he notes the absence of any provision in the policy equating an inmate's refusal to comply to an act of misconduct.

Hughes requests an order of this Court directing DOC (1) to expunge the misconducts from his file so that neither DOC nor the parole authorities can use the misconducts as a basis for reaching a negative parole decision, and (2) to cease similar practices in the future.

II. DISCUSSION

A. Demurer to Counts I and III-V

Before addressing DOC's separate challenges to each count of the Amended Petition, we will address DOC's characterization of Hughes' pleading in this case as one seeking relief in mandamus. Mandamus is an extraordinary remedy that is available only when a party establishes (1) that it has a clear legal right to relief, (2) a corresponding duty on the other party, and (3) that no other adequate remedy exists. *Waters v. Dep't of Corr.*, 509 A.2d 430 (Pa. Cmwlth. 1986). Mandamus is appropriate in such circumstances to compel the performance of a party's ministerial duty, but only when no doubt exists as to the right to the remedy. *Id.* Mandamus is only appropriately used to enforce those rights which have already been established. *Id.* When a petitioner raises a question involving an agency's exercise of discretion, he may be entitled to mandamus in order to compel the agency to exercise its discretion, but the petitioner is not entitled to an

order directing the agency to exercise its discretion in a particular way. *McGill v. Dep't of Health, Office of Drug & Alcohol Programs*, 758 A.2d 268, 270 (Pa. Cmwlth. 2000).

We do not read Hughes' petition as seeking relief in mandamus. Far from claiming that DOC has failed to act in accordance with a ministerial duty, Hughes complains that DOC has acted, but without legal authority to do so. Hughes also claims that certain DOC actions violated his constitutional rights and state and federal statutes. Thus, we do not read the Amended Petition as seeking an order compelling DOC to perform a ministerial duty; rather, we read the pleading as challenging alleged unlawful actions by DOC and seeking relief with respect to those alleged unlawful actions. We will thus evaluate the merits of DOC's preliminary objections through this prism.

1. Escrow Account for Post-Release Transportation Costs

The DOC policy in question is Policy 3.1.1, Section IV, Part N (Escrow Policy),[7] and provides in relevant part:

> The Department is not mandated by law to provide gratuities to an inmate being released. The inmate shall be responsible for having sufficient funds in his/her

[7] The Escrow Policy may be found at www.cor.state.pa.us (DOC Policies).

> account at the time of release to pay his/her own transportation and to cover miscellaneous expenses.
>
> . . . .
>
> 2. Escrow Procedures
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> . . . .
>
> c. An inmate who is scheduled for parole will have his/her account escrowed upon receipt of notification from Parole or the Unit Management staff.

According to DOC, it places an inmate's money in escrow shortly before DOC expects an inmate to be released, in order to ensure that an inmate has sufficient funds to transport him to a post-release destination. DOC apparently views the act of escrowing for travel as one ensuring that DOC does not have to provide an inmate with a travel gratuity. Hughes claims that DOC "appropriated" his funds without permission, legislative authority, or hearing. In support of its preliminary objection, DOC argues that implementation of the Escrow Policy does not result in an unconstitutional "taking" because DOC returns the funds to the inmate for his own personal use for transportation expenses, and (2) the escrowing of inmate funds for post-release travel is part of DOC's statutory duty to oversee the care, custody, and control of inmates.

Where an inmate raises a constitutional challenge to a prison regulation or policy, the inmate must show that the regulation or policy is "unreasonable"—*i.e.*, that it is not "reasonably related to legitimate penological

interests." *Brittain v. Beard*, 601 Pa. 409, 974 A.2d 479 (2009) (citing *Turner v. Safley*, 482 U.S. 78 (1987)). In considering the merits of such a challenge, we will assess the following factors:

> (1) whether there is a "valid, rational connection" between the prison regulation and the legitimate governmental interest asserted to justify it; (2) whether alternative means are open to inmates to exercise the asserted right; (3) what impact an accommodation of the asserted constitutional right will have on guards, inmates, and prison resources; and, (4) whether there are "ready alternatives" to the rule that would accommodate prisoners' rights at *de minimus* cost to penological interests.

Id. at 421, 974 A.2d at 486. With respect to these factors (known generally as the "*Turner* factors"), the United States Court of Appeals for the Third Circuit has explained:

> These requirements "serve as guides to a single reasonableness standard," but the first "'looms especially large' because it 'tends to encompass the remaining factors, and some of its criteria are apparently necessary conditions.'"

Ramirez v. Pugh, 379 F.3d 122, 126 (3d Cir. 2004) (quoting *Waterman v. Farmer*, 183 F.3d 208 (3d Cir. 1999)). In assessing these factors, we will give substantial deference to the professional judgment of prison administrators. *Brittain*, 601 Pa. at 421, 974 A.2d at 486. "[O]nce an inmate commences an action challenging a prison regulation, it is the obligation of the Department to set forth, in its answer to the inmate's complaint, its belief that there is a valid and rationale connection

between the challenged regulation and an enumerated legitimate penological interest." *Id.* at 423-24, 974 A.2d at 487. The burden then shifts to the inmate to prove the unreasonableness of DOC's belief. *Id.* at 424, 978 A.2d at 487-88.

The due process clause of the Fourteenth Amendment of the United States Constitution encompasses not only deprivations of property that are final, but also those that are temporary in nature. *Fuentes v. Shevin*, 407 U.S. 67, 84-85 (1972). And yet, in the context presented here, we also observe that although prisoners do not lose all due process rights once they are incarcerated, "the Due Process Clause in no way implies that [a prisoner's rights] are not subject to restrictions imposed by the nature of the regime to which they have been lawfully committed. . . . In sum, there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application." *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974).[8]

[8] We note that the decisions upon which DOC relies all arise under the Takings Clause of the Fifth Amendment to the United States Constitution. That provision informs the Court's review where a party alleges that a governmental entity has taken private property for public use. Such a taking arises most commonly in the context of eminent domain actions. But as suggested in one of the cited decisions, *Ruckelshaus v. Monsanto*, 467 U.S. 986 (1984), a taking that violates the Fifth Amendment may arise when other property interests are at issue, such as trade secrets. That is not the situation in this case where DOC has escrowed Hughes' property for Hughes' own individual use upon his release. We regard DOC's escrow of inmate funds to be for a non-public use, and, therefore, we conclude that the line of decisions upon which DOC relies in its argument is not applicable.

In *Webster v. Chevalier*, 834 F. Supp. 628 (W.D.N.Y. 1993), the district court considered a Section 1983 challenge of a New York State inmate to a correctional agency's policy that required the collection of $40 from inmates to be escrowed for "gate money" for their use upon release from prison. The policy provided for the periodic collection of 12.5% of funds from inmates received from wages or outside sources, which the corrections officials placed in an escrow account. Under that policy, the deductions continue until the $40 amount is accumulated, and then the correctional authorities would return the sum to the inmate upon his release. Under that state's applicable statutes, state correctional facilities *were required to provide* suitable clothes and *transportation* (to an inmate's county of conviction, generally) and the commissioner of the state correctional services was required by statute "to take such steps as are necessary to ensure that inmates have at least forty dollars available upon release." *Id*. at 630.

The district court viewed the *pro se* action as raising a Fourteenth Amendment claim for the temporary deprivation of property without due process of law and phrased the issue as "whether the [correctional officers had] 'deprived' the inmates of property without due process of law by collecting and earning interest on their funds until the total of $40 has been accumulated for 'gate money.'" *Id*. at 631. Relying upon *Sniadach v. Family Finance Corporation*, 395 U.S. 337 (1969), the court opined that the deprivation was *de minimis* in

nature, because the facts did not indicate that the escrowing of the 12.5% deduction without conducting a due process hearing would impose a "tremendous hardship" on the inmates, inasmuch as the state, at taxpayers' expense, would continue to provide food and shelter to the inmates before release. *Id.*

There are several distinguishing factors, however, between the inmate's claim in *Webster* and Hughes' claim. First, DOC does not claim any affirmative duty—set forth in statute, regulation, or policy—on its part to provide and/or fund post-release travel arrangements for inmates. Indeed, the Escrow Policy in question affirmatively provides that DOC has no such obligation. Second, the New York *statute* required the agency to take steps to ensure that prisoners have at least forty dollars available upon release from sources other than state money. DOC has cited no similar statutory mandate in Pennsylvania.

In light of the foregoing, we are satisfied at this preliminary stage that the Amended Petition sets forth a claim that implementation of the Escrow Policy caused Hughes to suffer at least a temporary deprivation of property without due process of law. Moreover, given the acknowledgement by DOC that it has no duty to provide a gratuity to an inmate upon his release, we cannot say that it is clear and free from doubt that Hughes will be unsuccessful in challenging the

reasonableness of the Escrow Policy. We thus will overrule DOC's preliminary objection directed to this Count of the Amended Petition.

2. Administrative Fee for Cable Television Service

Hughes challenges DOC's $0.75 administrative fee for cable television services. He claims that while he signed an agreement for cable services, he was nonetheless unaware that DOC would assess this fee for the service.

Hughes attached to his Amended Petition a copy of the DOC form "Inmate Subscriber Agreement" that inmates are required to sign if they wish to secure cable television services. The following language appears at the bottom of the form immediately above the inmate signature line:

> I have read the above statements *and the Cable TV Policy* or they have been read to me. I agree to abide by every statement made in this agreement and understand I am legally bound by this document.

(Emphasis added.) The footer to the document includes the following reference: "DC-ADM 002, Inmate Cable Television Service Policy." The DOC policy clearly provides that inmates who wish to have cable television service must maintain sufficient funds in their inmate account to pay the "Monthly Cable Service Charge." (DC-ADM 002 §§ 1.A.4, 1.B.2.) The policy defines "Monthly Cable Service Charge" as follows:

> **Monthly Cable Service Charge -** The monthly fee for cable television service deducted from an inmate subscriber's facility account. The charge consists of the standard monthly subscription rate as defined in the agreement between the Cable Service Provider and the Department *plus a $.75 per month administrative fee*.

(*Id*. *Glossary of Terms* (emphasis added).)

In signing the Inmate Subscriber Agreement, Hughes and other inmates effectively acknowledge both the existence and contents of DOC's cable television policy, which expressly includes the $0.75 monthly administrative fee. The very document attached to Hughes' pleading as Exhibit J thus conflicts with the averments in the Amended Pleading that Hughes neither knew of nor agreed to DOC's deduction of the $0.75 monthly cable television service administrative fee from his inmate account. This alleged lack of knowledge is the crux of Hughes challenge to the fee. Because we are not constrained to accept as true the conflicting averments in the Amended Pleading, we will sustain DOC's preliminary objection on this claim. *See Baravordeh v. Borough Council of Prospect Park*, 699 A.2d 789, 791 (Pa. Cmwlth. 1997) ("[A] court is not bound to accept as true any averments in a complaint which are in conflict with exhibits attached to it.").

3. Prescription Eyeglass Claim

DOC's preliminary objection to this claim appears to relate solely to the aspect of Hughes' request for injunctive relief under the UTPA. It maintains that Hughes may not seek injunctive relief under the UTPA. DOC does not preliminarily object to the part of his claim in which he seeks repayment for his eyeglasses.

We agree with DOC on Hughes' claim for injunctive relief. As a private litigant, Hughes may only pursue a claim for damages under Section 9.2(a) of the UTPA, 73 P.S. § 201-9.2. Section 9.2(b) of the UTPA, upon which Hughes relies, does not provide a litigant with a right to injunctive relief. The provision merely provides that a private litigant may rely upon an order granting injunctive relief to the Attorney General or a district attorney under Section 4 of the UTPA, 73 P.S. § 201-4, as *prima facie* evidence of a violation of the UTPA. It does not authorize a private litigant to seek injunctive relief. Consequently, we will sustain DOC's preliminary objection to Hughes' request for injunctive relief for his eyeglasses claim under the UTPA.

4. Retaliatory and/or Arbitrary and Capricious Misconduct Reports

In order for an inmate to maintain a retaliation claim against DOC, the inmate bears the burden to prove, by a preponderance of evidence, that (1) DOC

retaliated against him because he exercised a constitutional right (such as access to the courts), (2) the inmate suffered an adverse action as a result of the retaliation, and (3) the retaliatory action does not advance a legitimate penological goal. *Yount v. Dep't. of Corr.*, 600 Pa. 418, 966 A.2d 1115, 1121 (2009). It is the third proof element of *Yount* that is the focus of DOC's preliminary objection in the nature of a demurrer.

We believe it is reasonable to conclude that where a misconduct report is well-founded both in fact and in law, the issuance of the misconduct serves a legitimate penological interest. Along these lines, DOC argues that an inmate raising a retaliation claim must demonstrate that DOC would not have taken the alleged retaliatory actions "but for" the alleged protected activity—in this case, the filing of grievances. *Johnson v. Lehman*, 609 A.2d 880, 884 (Pa. Cmwlth. 1992).

In his Amended Petition, Hughes alleges that the five misconducts stemmed from his (a) not accepting medical treatment and (b) refusing or failing to sign a form acknowledging his refusal of medical treatment. He does not dispute the factual bases for these misconducts; rather, he alleges that they lack legal justification in that they conflict with DOC policies and rights afforded to inmates under the United States Constitution. Hughes claims that these allegations support

his contention that DOC issued the misconducts as a retaliatory measure because he filed grievances.

Whether Hughes' claim that the misconducts lacked any legal justification is a question not presently before us. DOC only argues that Hughes has failed to plead sufficient facts to support his claim for retaliation. DOC does not in any way attempt to refute Hughes' allegations that the misconducts lacked any support in DOC policies or would pass constitutional muster. We thus believe that these allegations minimally satisfy the "but for" pleading requirement to state a claim for retaliation. Accordingly, we will overrule DOC's preliminary objection in the nature of a demurrer addressed to Hughes' retaliation claim.

B. Lack of Subject Matter Jurisdiction

DOC claims that this Court lacks subject matter jurisdiction to review prison misconduct determinations. In *Ricketts v. Central Office Review Committee of the Department of Corrections*, 557 A.2d 1180 (Pa. Cmwlth. 1989), we concluded that final determinations by the Central Office Review Committee relating to misconduct determinations are not subject to appeal to this Court: "[I]t is clear that [the inmate] now seeks to have this Court review his misconduct determination. Because we do not have jurisdiction over determinations of this kind . . . we must grant [DOC's] preliminary objections. *Ricketts*, 557 A.2d at 1181.

Here, however, Hughes purports to set forth a claim in our *original* jurisdiction for retaliation. This Court has subject jurisdiction over such claims, even where the challenged retaliatory action is an alleged *false* misconduct charge. *See Brown v. Blaine*, 833 A.2d 1166, 1171 n.11 (Pa. Cmwlth. 2003). In such cases, we cannot avoid scrutinizing the factual and legal underpinnings of the misconducts at issue. As we noted in *Brown*, however, we will only review charges that DOC issued misconducts in retaliation for protected activities where the inmate alleges sufficient facts in his pleading to support the retaliation claim: "Otherwise, under the guise of claiming retaliation, we would turn a case filed in our original jurisdiction into a thinly disguised impermissible appeal of the decision on the misconduct conviction." *Id.*

Because we are overruling DOC's preliminary objection in the nature of a demurrer directed to Hughes' retaliation claim, DOC has not convinced us at this stage that Hughes has failed to state a claim for retaliation. Thus, we will also overrule DOC's preliminary objection for lack of subject matter jurisdiction.

C. Failure to Conform With Rule of Court

DOC has also objected to Hughes' Amended Petition because the pleading is not divided into paragraphs numbered consecutively, as required by Rule 1513(c) of the Pennsylvania Rules of Appellate Procedure. We will provide

Hughes thirty (30) days to file a second amended petition for review that conforms with Rule 1513(c) and our disposition of DOC's other preliminary objections.

III. CONCLUSION

For the reasons set forth above, we will sustain DOC's preliminary objections in the nature of a demurrer directed to Count III of the Amended Petition (cable television administrative fee) and Hughes' request for injunctive relief under the UTPA in Count IV (prescription eye-glasses). We will also sustain DOC's preliminary objection due to the failure of Hughes to conform with the pleading requirement set forth in Rule 1513(c) of the Pennsylvania Rules of Appellate Procedure. We will overrule the remaining preliminary objections.

Hughes will have thirty (30) days to file a second amended petition for review consistent with this Court's ruling on DOC's preliminary objections.

P. KEVIN BROBSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Hughes – Similarly Situated Persons,	:	
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O R D E R

AND NOW, this 6th day of October, 2010, upon consideration of the Respondents' Preliminary Objections to Petitioner's Amended Petition for Review, it is hereby ordered as follows:

1. Respondents' preliminary objection to Petitioners' cable television administrative fee claim (Count III) is SUSTAINED and that claim is DISMISSED;

2. Respondents' preliminary objection to Petitioners' request for injunctive relief under Pennsylvania's Unfair Trade Practices and Consumer Protection Act (Count IV) is SUSTAINED and that request for injunctive relief is DISMISSED;

3. Respondents' preliminary objections in the nature of a demurrer directed to Counts I (escrow for post-release travel expenses) and V (retaliation) are OVERRULED;

4. Because the Amended Petition for Review does not conform with the pleading required in Rule 1531(c) of the Pennsylvania Rules of Appellate Procedure, Respondents' preliminary objection for failure to conform with rule of court is SUSTAINED; and

5. Within thirty (30) days of the date of this Order Petitioner shall file a second amended petition for review that conforms with this Court's disposition of Respondents' Preliminary Objections.

P. KEVIN BROBSON, Judge

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

OPINION NOT REPORTED

DISSENTING OPINION BY
PRESIDENT JUDGE LEADBETTER **FILED:** October 6, 2010

Because I believe that the escrow procedure for post-release travel expenses is reasonably related to a legitimate governmental policy, and that this is simply a question of law involving no potential factual disputes, I must respectfully dissent from that portion of the majority decision which overrules the Department's preliminary objection in the nature of a demurrer to Count I of the Petition for Review. Otherwise, I join in the well-stated decision of the majority.

BONNIE BRIGANCE LEADBETTER,
President Judge