

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kevin Everett, :
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 Petitioner :
 :
 :
 v. : No. 74 M.D. 2009
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 Dorina Varner, Chief Grievance : Submitted: August 26, 2011
 of Inmate Grievances and Appeals :
 for the Penna. Dept. of Corrections, :
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: September 19, 2011

Presently before this Court for disposition in our original jurisdiction is Kevin Everett's Motion for a Judgment on the Pleadings.¹ On February 12, 2009,

¹ Technically, Everett should have filed a motion for summary relief pursuant to Pa.R.A.P. 1532(b), which provides that "[a]t any time after the filing of a petition for review in an . . . original jurisdiction matter the court may on application enter judgment if the right of the applicant thereto is clear." As the note to Rule 1532(b) states, Rule 1532(b) "authorizes immediate disposition of a petition for review, similar to the type of relief envisioned by the Pennsylvania Rules of Civil Procedure regarding judgment on the pleadings." See Note to Pa.R.A.P. 1532(b).

Everett filed with this Court a Petition for Review in the Nature of Mandamus (Petition for Review).² Therein, Everett alleges the following facts.

Everett is an inmate incarcerated at the State Correctional Institute at Dallas. Everett pled guilty on September 29, 1989, before the Honorable Theodore McKee of the Court of Common Pleas of Philadelphia County to indictments #36, #37, #43, #46 and #49. Petition for Review at ¶7. On April 6, 1990, Everett was sentenced to what appeared to be 18 to 40 years of incarceration. *Id.* at ¶8. On April 30, 1990, the sentence of April 6, 1990 was vacated. *Id.* at ¶9, Exhibit A to Petition for Review. On January 10, 1991, according to the commitment papers,³ Everett was re-sentenced to a total term of 13 to 30 years of incarceration. *Id.* at ¶10, Exhibit B to Petition for Review. Everett's sentencing status sheet issued by the Department of Corrections (DOC) does not reflect a true rendition of the sentences imposed by the Court of Common Pleas of Philadelphia County or the official commitment papers forwarded to the DOC by the Philadelphia Court of Common Pleas. *Id.* at ¶4. To this

² While mandamus is an extraordinary writ, it can be used to compel the DOC to honor particular sentencing orders or to compute a prisoner's sentence properly. Saunders v. Department of Corrections, 749 A.2d 553, 555 (Pa. Cmwlth. 2000) (citing Doxsey v. Pennsylvania Bureau of Corrections, 674 A.2d 1173 (Pa. Cmwlth. 1996)); Jones v. Department of Corrections, 683 A.2d 340 (Pa. Cmwlth. 1996). Mandamus is designed to compel performance of a ministerial act or mandatory duty where there exists: (1) a clear legal right in the petitioner; (2) a corresponding duty in the respondent; and (3) an absence of any other adequate and appropriate remedy. Wilson v. Pennsylvania Board of Probation and Parole, 942 A.2d 270 (Pa. Cmwlth. 2008). Mandamus is not available to establish legal rights, but is appropriate only to enforce rights that have been established. *Id.* We further note that a court, in considering a request for mandamus relief, cannot direct the manner in which an official performs a discretionary function. Mazin v. Bureau of Professional and Occupational Affairs, 950 A.2d 382 (Pa. Cmwlth. 2008). Mandamus is appropriate, however, where a legislative or regulatory scheme directs that an act be done within a prescribed time period. *Id.*

³ The commitment papers referred to by Everett are each entitled "Court Commitment" and each are on a form labeled "DC-300B."

date, Everett's current sentencing status sheet reflects 23 to 50 years of incarceration. Id. at ¶11, Exhibit C to Petition for Review.

After receiving true and correct copies of his commitment papers, Everett, on several occasions, requested that the DOC correct and/or modify his sentencing status sheet in accordance with the commitment papers and the DOC's policy. Petition for Review at ¶12. However, Everett's requests were denied and he timely filed a grievance. Id. This grievance was initially denied and Everett appealed to the facility manager, who in turn, also denied the grievance. Id. Everett appealed the denial to the Chief Grievance Officer, Dorina Varner on December 16, 2008. Id. By decision dated February 4, 2009, Varner denied Everett's final appeal. See Petitioner's Supplemental Petition for Review in the Nature of Mandamus filed March 12, 2009.

Everett requests that this Court grant the requested relief to have his sentencing status sheet reflect the sentences as they appear on the official commitment papers prepared by the Philadelphia Court of Common Pleas.

The DOC filed an Answer and New Matter to Everett's Petition on March 24, 2009. Therein, the DOC admits that the sentencing status sheet issued by the DOC is not consistent with some of the language in part of the commitment papers (DC-300B). Answer at ¶4. However, the DOC denies that the sentencing status sheet issued by the DOC is not consistent with the true sentence imposed by the Philadelphia Court of Common Pleas. Id. The DOC avers that the sentencing status sheet is consistent with the sentences imposed by the court and other parts of the commitment papers. Id.

In its New Matter, the DOC avers that the original 23 to 50 year sentence imposed upon Everett on April 6, 1990 was not accurately reflected on the

commitment papers (DC-300B). New Matter at ¶ 13, Exhibit A, Clarification Letter. The DOC states that Everett was re-sentenced on January 10, 1991 and received an aggregate sentence of 23 to 50 years of incarceration. Id. at ¶14, ¶16, Exhibit A. Specifically, the DOC alleges that the docket sheets, which are signed by Judge McKee, show that Everett received: (1) a sentence of 10 to 20 years of incarceration on indictment number 37; (2) a sentence of 8 to 20 years of incarceration on indictment number 43, which is to run consecutive to indictment number 37; and (3) a sentence of 5 to 10 years of incarceration on indictment number 46, which is to run consecutive to indictment number 43. Id. at ¶16, Exhibit B, Docket Sheet; ¶17, Exhibit C, Docket Sheet; ¶18, Exhibit D, Docket Sheet; ¶¶23-25. The DOC alleges that part of the commitment papers (DC-300B) erroneously indicate that indictment number 43 is to run concurrent to indictment number 37. Id. at ¶21, Exhibit E, Commitment form. The DOC alleges that the commitment papers are contradicted by the official docket sheets. Id. at ¶22, Exhibits C, E.

The DOC avers further that a DOC employee made a written inquiry regarding the actual sentence imposed on January 10, 1991. Id. at ¶25, Exhibit A. The sentencing Judge responded in writing on February 19, 1991, that the aggregate sentence imposed was 23 to 50 years of incarceration. Id. at ¶26, Exhibit A. Finally, the DOC avers, *inter alia*, that Everett is not legally entitled to a change in the computation of his aggregate sentence as the DOC is obliged to compute the sentence that was imposed by the Philadelphia Court of Common Pleas. Id. at ¶29.

Everett filed a Response to the Answer and New Matter on May 27, 2009, denying all the materials allegations contained therein. On March 17, 2011, this Court issued a Rule to Show Cause why Everett's Petition should not be

dismissed for want of prosecution. On April 11, 2011, Everett filed the instant Motion for Judgment on the Pleadings and the Rule to Show Cause was discharged.

Everett filed his brief in support of the Motion for Judgment on the Pleadings on July 7, 2011. The DOC filed its brief in opposition on August 8, 2011, and Everett filed a reply brief on August 22, 2011.

In support of the Motion for a Judgment on the Pleadings, Everett contends that he exhausted all available administrative remedies and his final appeal was denied by Varner. Everett contends that the initial commitment papers of April 6, 1990, which established his minimum and maximum dates of sentence, were vacated. See Exhibit A to Petition for Review. Thereafter, Everett contends, new commitment orders/papers were issued on January 10, 1991. See Exhibit B to Petition for Review. Everett argues that these January 10, 1991 commitment orders show that he was resentenced to a term of 13 to 30 years of incarceration. Id. Everett argues, based on the January 10, 1991 commitment orders/papers, that his current sentencing status sheet erroneously reflects an aggregate sentence of 23 to 50 years of incarceration. See Exhibit C to Petition for Review. Everett believes that the DOC is relying on his old commitment papers from his April 6, 1990 sentence that was later vacated. Everett contends that the new January 10, 1991 commitment papers are what should control this matter.

Everett also argues that the clarification letter sent from Judge McKee to the DOC at most only represents what the Judge intended for Everett's sentence to be, not what he was actually sentenced to serve. Everett contends that the terms of the sentence in the sentencing order should control as reflected in the commitment orders/papers.

In response, the DOC argues that Everett's right to relief is not clear. The DOC acknowledges that according to the commitment forms, Everett received a sentence of 10 to 20 years on indictment number 37, a concurrent 8 to 20 years on indictment number 43, and a consecutive 5 to 10 years on indictment number 46. Therefore, the aggregate sentence, according to the commitment forms, is 13 to 30 years. However, the DOC points out that according to the docket sheet form signed by Judge McKee, the sentence imposed on indictment number 43 is to run consecutive, not concurrent, to the sentence imposed on indictment number 37. See Exhibits B, C, and D to Answer and New Matter. Thus, the DOC argues, the aggregate sentence actually imposed is 23 to 50 years of incarceration.

The DOC argues further that a commitment form is not an order signed by the Judge and entered into the docket. The DOC argues that the only sentence known to law is that sentence entered upon the records of the court. The DOC contends that the letter from Judge McKee simply cleared the confusion raised by the mistake on the commitment form. See Exhibit A to Answer and New Matter.

A motion for judgment on the pleadings in this Court's original jurisdiction is in the nature of a demurrer, and as such, all of the opposing party's allegations are viewed as true and only those facts which have been specifically admitted by that party may be considered against it. Bergdoll v. Kane, 694 A.2d 1155 (Pa. Cmwlth. 1997). The Court may only consider the pleadings themselves and any documents properly attached thereto. Id. A grant of a motion for judgment on the pleadings is proper only when there exists no genuine issue of fact, and the moving party is entitled to judgment as a matter of law. Pennsylvania Association of Life Underwriters v. Foster, 608 A.2d 1099 (Pa. Cmwlth. 1992).

Based on our review of the pleadings and the documents properly attached thereto, we conclude that Everett is not entitled to judgment on the pleadings. As correctly stated by the DOC, a commitment form is not an order signed by the judge and entered into the docket. See Commonwealth v. Isabell, 503 Pa. 2, 467 A.2d 1287 (1983); Jones. This Court has made it clear that the DOC is bound to follow the sentencing court's order. Oakman v. Department of Corrections, 903 A.2d 106, 108-09 (Pa. Cmwlth. 2006) (citing McCray v. Department of Corrections, 582 Pa. 440, 872 A.2d 1127 (2005)); see also Commonwealth ex rel. Powell v. Department of Corrections, 14 A.3d 912, 915 (Pa. Cmwlth. 2011). We have also made it clear that administrative memos, such as the DC300B commitment forms, do not have the same force and effect as court orders. Id.

Everett admits in his Petition for Review that he was re-sentenced on January 10, 1991; however, while he has attached copies of the January 10, 1991 *commitment forms* to his Petition for Review, he has failed to attach copies of the Philadelphia Court of Common Pleas' actual sentencing orders. Therefore, there are no sentencing orders attached to Everett's Petition for Review to support his assertion that he was re-sentenced on January 10, 1991, to a total term of 13 to 30 years of incarceration, rather than 23 to 50 years.

The DOC admits that there is a discrepancy between Everett's Court Commitment form (DC300B) and his sentencing status sheet. However, the DOC contends that the Court Commitment form (DC300B) is incorrect. In support of this assertion, the DOC has attached to its New Matter copies of what appears to be the handwritten docket sheets sentencing Everett with respect to indictment numbers 37, 43, and 46, which are signed by Judge McKee of the Philadelphia Court of Common Pleas. See New Matter, Exhibits B, C, D.

The docket sheet for indictment number 37 indicates that it was signed and entered on January 10, 1991 and further indicates as follows: “Petition to Modify is hereby Denied. Sentence of 4-6-90 is reimposed – not less than ten (10) years or more than twenty (20) years at the State Correctional Institution.” See New Matter, Exhibit B. The docket sheet for indictment number 43 indicates that it was signed and entered on January 10, 1991 and further indicates as follows: “Petition to Modify Sentence is hereby Denied. Sentence of 4-6-90 is hereby reimposed – not less than eight (8) years or more than twenty (20) years at the State Correctional Institution. Said sentence is to run consecutively to CP-89-02-37 [indictment number 37].” Id., Exhibit C. The docket sheet for indictment number 46 indicates that it was signed and entered on January 10, 1991 and further indicates as follows: “Petition to Modify Sentence is Granted. Sentence of 4-6-90 is vacated. New Sentence – not less than five (5) years nor more than ten (10) years at the State Correctional Institution. Said sentence is to run consecutively to CP-89-02-43 [indictment 43]. . .” Id., Exhibit C.

These docket sheets attached to the DOC’s New Matter clearly contradict the commitment forms attached to Everett’s Petition for Review. Accordingly, the pleadings filed in this matter reveal that Everett is not entitled to the relief requested in his Motion for a Judgment on the Pleadings. Therefore, we deny Everett’s Motion.⁴

JAMES R. KELLEY, Senior Judge

⁴ Although our review of this matter appears to demonstrate that summary relief could be granted to the DOC, no motion for such relief is before this Court.

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ORDER

AND NOW, this 19th day of September, 2011, Petitioner's Motion for a Judgment on the Pleadings is DENIED.

JAMES R. KELLEY, Senior Judge