IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rodney Derrickson, Appellant	:	
v.	:	No. 913 C.D. 2007
	:	Submitted: March 12, 2008
Kathleen Sluzevich, C.E.V.A., Robert Unell, C.C.P.M.; Serena Saar, C.E.V.A.; Deputy Kenneth Chmielewski; Superintendent Edward Klem; Sharon Burks, C.O.G.; Jeffrey A. Beard, Secretary of D.O.C.	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT FILED: July 31, 2008

Rodney Derrickson (Derrickson), an inmate serving a life sentence at the State Correctional Institute at Mahanoy (SCI-Mahanoy), appeals an order of the Court of Common Pleas of Schuylkill County (trial court) dismissing his civil rights complaint with prejudice. Derrickson asserts that his constitutional right to equal protection of the laws has been violated by a prison policy that limits the number of jobs available to those serving a life sentence. *Sua sponte* the trial court denied Derrickson's *in forma pauperis* petition and dismissed his complaint as frivolous for

the stated reason that Derrickson had no property right in a prison job that was protected by due process. For the reasons set forth below, we vacate and remand.

The facts, as drawn from Derrickson's complaint, are as follows. On December 14, 2005, Derrickson was recommended for work as a janitor in the SCI-Mahanoy medical department by the medical work supervisor, and on December 28, 2005, he was hired for the position. By letter of February 1, 2006, to SCI-Mahanoy's "Employment and Vocational Assistant" Derrickson inquired into the start date of the new job. He was informed that "at this time there isn't room for a lifer in medical." Complaint, ¶12. Derrickson continued to pursue employment in the medical department. When he learned that seven "non-lifers" had been hired as medical janitors, the same position for which he had been hired but not retained, Derrickson sought an explanation and was informed that it was because of the prison employment policies for inmates serving life sentences. Complaint, ¶15.

On August 7, 2006, Derrickson filed an inmate grievance concerning the janitor position, asserting that he'd been discriminated against because of his status as a "lifer." The grievance was denied for the stated reason that "the number of lifers that an approved work area may employ is 10 percent of the work force" and the "assignments to the medical area have been made according to our local procedures." Complaint, ¶¶17, 18.

Having exhausted his administrative remedies, Derrickson filed, *pro se*, a civil rights complaint seeking compensatory and punitive damages, costs, fees and injunctive relief, along with a petition to proceed *in forma pauperis*. Derrickson alleged that under color of state law the named Defendants intentionally deprived him

of equal protection.[1] Specifically, he challenged the prison's practice of treating "lifers" differently from "non-lifers" with respect to employment opportunities within the prison. Derrickson asserted that the policy of limiting the number of life-sentenced inmates that can work in a particular job site violated his right to equal protection as guaranteed under the Fourteenth Amendment to the United States Constitution, as well as Article I, Sections 1, 20, 25, and 26 of the Pennsylvania Constitution.

Sua sponte, the trial court denied Derrickson's *in forma pauperis* petition and dismissed his complaint with prejudice, concluding that the complaint was frivolous because it failed to state a claim under 42 U.S.C. §1983. Derrickson appealed, and the trial court issued an order under Pennsylvania Rule of Appellate Procedure 1925(a).[2] In response, Derrickson filed a Concise Statement of Matters Complained of on Appeal, stating that his complaint presented an equal protection claim and, therefore, the trial court's dismissal was in error.

In response, the trial court issued an opinion explaining that Derrickson's complaint was frivolous because an inmate does not have a property or

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[1] Defendants include current and past employees at SCI-Mahanoy, Kathleen Sluzevich, acting Centralized Employment and Vocational Assistant; Serena Saar, Centralized Employment and Vocational Assistant; Robert Unell, Corrections Classification and Program Manager; Kenneth Chmielewski, Deputy Superintendent for Centralized Service; Edward Klem, Superintendent at SCI-Mahanoy; Sharon Burks, Chief Grievance Coordinator; and Jeffrey Beard, Secretary of Corrections.

[2] It states, in relevant part:

> Upon receipt of the notice of appeal, the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, or shall specify in writing the place in the record where such reasons may be found.

PA. R.A.P. 1925(a).

liberty interest in a particular prison job. For this proposition, the trial court relied upon this Court's precedent in *Johnson v. Horn*, 782 A.2d 1073 (Pa. Cmwlth. 2001), and *Wilder v. Department of Corrections*, 673 A.2d 30, 36 n.6 (Pa. Cmwlth. 1996), in which this Court stated that

> [w]e must allow prison officials the freedom to exercise their administrative authority without judicial oversight. Some administrative actions will inevitably make prisoners feel cheated; nevertheless, this does not give them a federal cause of action.

Wilder established that a prisoner does not have a liberty interest in participating in a prerelease program, but it said nothing whatsoever about equal protection. The trial court did not offer any authority or analysis to explain why it believed Derrickson's equal protection claim to be frivolous.

On appeal,[3] Derrickson asserts that the trial court erred. Derrickson acknowledges that an inmate has no constitutionally recognized property or liberty interest in a particular prison job assignment.[4] He nonetheless contends that the SCI-Mahanoy officials cannot discriminate on the basis of an inmate's status as a "lifer" when assigning prison jobs. He contends that he has pled a *prima facie* violation of equal protection, triggered by the prison's classification of inmates by the length of their sentence. He contends that Defendants deprived him of his right to equal

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[3] Our scope of review of the trial court's order in *sua sponte* dismissing the complaint is plenary because the trial court dismissed the complaint for failure to state a cause of action upon which relief may be granted. *Owens v. Shannon*, 808 A.2d 607, 609 n.5 (Pa. Cmwlth. 2002).

[4] *See, e.g., Miles v. Wiser*, 847 A.2d 237, 240-241 (Pa. Cmwlth. 2004) (recognizing an inmate's interest in keeping a prison job does not amount to a property or liberty interest).

protection guaranteed under the Fourteenth Amendment to the United States Constitution, and Article I, Sections 1 and 26 of the Pennsylvania Constitution.[5]

The Department of Corrections counters that the trial court properly dismissed Derrickson's complaint. It maintains that denying him employment based upon his status as a lifer does not give rise to an equal protection claim because the underlying prison job policy, which advances institutional security and orderly prison administration, is rationally related to legitimate penological interests. Accordingly, treating "lifers" differently from "non-lifers" does not violate Derrickson's right to equal protection. The Department never presented this argument to the trial court because Derrickson's complaint was dismissed before any responsive pleading could be filed.

We begin our review with Pennsylvania Rule of Civil Procedure 240(j), which was the basis for the trial court's dismissal of the complaint. Rule 240(j) provides:

> If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a

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[5] Article I, Section 1 of the Pennsylvania Constitution provides:

> All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

PA.CONST. art. I, §1. Article I, Section 26 of the Pennsylvania Constitution provides:

> Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

PA. CONST. art. I, §26. Together, these provisions are understood to establish a right to equal protection of the laws equivalent to that established in the United States Constitution. *Kramer v. Workers' Compensation Appeal Board (Rite Aid Corp.)*, 584 Pa. 309, 332, 883 A.2d 518, 532 (2005).

> petition for leave to proceed in forma pauperis, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

PA. R.C.P. No. 240(j). The official note to this Rule states that "[a] frivolous action or proceeding has been defined as one that 'lacks an arguable basis either in law or in fact.'" *Id.*, Note (*quoting Neitzke v. Williams*, 490 U.S. 319, 325 (1990)). In *Neitzke*, the Supreme Court explained that 28 U.S.C. §1915(d), the then-federal equivalent of PA. R.C.P. No 240(j), authorized the dismissal of a complaint, immediately upon filing, where *in forma pauperis* status is sought, if the complaint contains an "indisputably meritless legal theory" or if the factual contentions are "clearly baseless," such as where the facts pled describe "fantastic or delusional scenarios." *Neitzke*, 490 U.S. at 327-328.

By its terms, Section 1983 creates no substantive rights;[6] it merely provides the vehicle for litigating deprivations of certain federal rights otherwise established. *Oklahoma City v. Tuttle*, 471 U.S. 808, 817 (1985). To state a claim under Section 1983, a plaintiff must allege a violation of rights secured by the United States Constitution or by the statutes of the United States and show that the alleged deprivation was committed by a person acting under color of state law. *Owens v. Shannon*, 808 A.2d 607, 610 n.6 (Pa. Cmwlth. 2002). The substantive right asserted

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[6] Section 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State … subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

42 U.S.C. §1983.

by Derrickson in his Section 1983 complaint is his right to equal protection of the laws, as established in the United States Constitution.[7]

The equal protection clause of the Fourteenth Amendment of the United States Constitution provides, in relevant part, that "[n]o state shall … deny to any person within its jurisdiction the equal protection of the laws." U. S. CONST. amend. XIV, §1.[8] The equal protection clause directs "that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center,* 473 U.S. 432, 439 (1985). The right to equal protection under the law does not prohibit the Commonwealth from classifying individuals for the purpose of different treatment, and it does not require equal treatment of people having different circumstances. *Curtis v. Kline,* 542 Pa. 249, 255, 666 A.2d 265, 267-268 (1995) (citations omitted).

Classifications that do not burden a fundamental or important right, or that do not use a suspect or sensitive classification, will be sustained so long as they are rationally related to a legitimate governmental interest.[9] *Small v. Horn,* 554 Pa.

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[7] A Section 1983 action cannot serve as the platform to pursue a violation of the Pennsylvania Constitution. Accordingly, we consider Derrickson's appeal only as a challenge to the trial court's holding that the complaint was frivolous as to the federal constitutional claim presented.

[8] Section 1 of the Fourteenth Amendment to the United States Constitution states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, §1.

[9] The courts have identified three types of classifications: (1) classifications which implicate a "suspect" class or a fundamental right; (2) classifications implicating an "important" though not fundamental right or a "sensitive" classification; and (3) classifications which involve none of these. Suspect classes are those based on race or national origin, and are reviewed under a standard of strict scrutiny. *Larsen v. Senate of the Commonwealth of Pennsylvania,* 154 F.3d 82, 93 n.16 (3d

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600, 615, 722 A.2d 664, 672 (1998). As explained by our Supreme Court, the rational basis test requires a two-step analysis: The Court first determines whether the challenged statute seeks to promote a legitimate state interest and, if it does, then the legislative classification must be found reasonably related to accomplishing that articulated state interest. *Kramer v. Workers' Compensation Appeal Board (Rite Aid Corp.),* 584 Pa. 309, 335, 883 A.2d 518, 534 (2005). Under this deferential standard, Courts are "free to hypothesize reasons why the legislature created the particular classification at issue...." *Id.* at 336, 883 A.2d at 534.

Derrickson's complaint states a *prima facie* equal protection claim. It states that under color of state law Derrickson has suffered unequal treatment as the result of his membership in a particular class of prisoners, *i.e.*, those serving life sentences. There is nothing else that Derrickson needed to plead to state an equal protection claim.[10] The trial court held Derrickson's complaint to be frivolous

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(continued . . .)

Cir. 1998). Quasi-suspect classes are gender and legitimacy, which are reviewed under a standard of heightened review. *Clark v. Jeter,* 486 U.S. 456, 461 (1988). Our Supreme Court has used the term "sensitive classification" when referring to quasi-suspect classifications. *McCusker v. Workmen's Compensation Appeal Board,* 536 Pa. 380, 385, 639 A.2d 776, 778 (1994). The third type of classifications are reviewed under the rational relationship test.

[10] Notably, the Court of Appeals for the Third Circuit has held, in a non-precedential opinion, that to state an equal protection claim, the plaintiff must allege not just differential treatment but that this differential treatment does not pass the strict scrutiny or rational relationship test. The Third Circuit stated that such a plaintiff

> must allege that he has been treated differently because of his membership in a suspect class or his exercise of a fundamental right, or that he has been treated differently from similarly-situated others and that this differential treatment was not rationally related to a legitimate state interest.

Young v. New Sewickley Township, 160 Fed. Appx. 263, 266 (3d Cir. 2005). At least one District Court has adopted this holding. *See Renchenski v. Williams*, 2007 No. 3:06-CV-278, 2007 WL 2155542 (M.D. Pa. July 26, 2007). However, in Section 1983 cases, Pennsylvania courts must follow the rules of procedure that govern any civil litigation brought in our court system. *Heinley v.*

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because he does not have a property or liberty interest in a prison job. The trial court failed to appreciate, however, that a citizen does not need to have a protected property or liberty interest at risk in order to claim a violation of equal protection of the laws. A classification that abridges a protected property interest is simply subject to closer scrutiny. The trial court did not know, or could not explain, why Derrickson's equal protection claim was frivolous.[11] In short, the trial court's stated reasons for dismissing Derrickson's complaint were simply wrong, making an affirmance impossible.

Here, the Department's defense of the trial court's decision is based on legal theories that, in effect, present a demurrer to Derrickson's complaint. Demurrers should be decided in the first instance by the trial court, not upon appellate review. Any dismissal of a prisoner's complaint as frivolous has serious consequences for that prisoner. *See* Section 6602 of the Prison Litigation Reform

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(continued . . .)

Commonwealth, 621 A.2d 1212, 1216-1217 (Pa. Cmwlth. 1993). Stated otherwise, the pleading requirements for a federal court action are not relevant to a state Section 1983 action.

We have not found a case holding that to plead an equal protection claim under the Pennsylvania Rules of Civil Procedure, the plaintiff must allege whether his claim involves a fundamental right or suspect classification and that the differential treatment was not rationally related to a legitimate state interest. In the absence of such a holding, it cannot be said that a complaint that lacks such allegations is fatally defective or frivolous for purposes of PA. R.C.P. No. 240(j).

[11] Trial courts are not expected to know all laws, all the time. The litigants present the applicable law in motions and briefs.

As noted by the dissent, there is no precedent holding that classifying prisoners by length of sentence implicates fundamental rights or is inherently suspect. Likewise, there is no precedent that establishes the contrary, *i.e.*, that such a classification is not suspect or does not impact a fundamental right. Stated otherwise, this is a case of first impression, which makes it all the harder for Derrickson's complaint to be dismissed as frivolous. This is not to say that the Department would not succeed in a demurrer, for all the reasons set forth in the well-reasoned opinion of the dissent. The demurrer, however, should be decided at the pleading stage not at the appellate stage of a proceeding.

Act, 42 Pa. C.S. §6602(f) (allowing a trial court to dismiss a prisoner's prison condition complaint where that prisoner has had three prior condition complaints dismissed as frivolous). As a matter of fairness, therefore, a trial court should not be allowed to dismiss a complaint as frivolous without being able to explain that decision.

The trial court did not explain why Derrickson's complaint presents an "indisputably meritless legal theory" or makes factual contentions that are "fantastic or delusional." *Neitzke*, 490 U.S. at 327-328. Accordingly, we vacate the trial court's order, reinstate Derrickson's complaint and petition, and remand the matter to the trial court to allow the Department of Corrections to file a responsive pleading.

MARY HANNAH LEAVITT, Judge

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ORDER

AND NOW, this 31st day of July, 2008, the order of the Court of Common Pleas of Schuylkill County, dated April 18, 2007, at No. S-787-2007, is VACATED and REMANDED for further consideration in accordance with the accompanying opinion. The Department of Corrections is directed to file a responsive pleading.

Jurisdiction relinquished.

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MARY HANNAH LEAVITT, Judge

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HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

DISSENTING OPINION
BY JUDGE COHN JUBELIRER **FILED: July 31, 2008**

I respectfully dissent from the majority's opinion. I do not believe this matter needs to be remanded to the trial court, and I would affirm. The majority would remand on the grounds that the trial court did not consider Derrickson's equal protection claim and that this claim is not patently meritless. While I agree that Derrickson, in his complaint, articulated an equal protection claim, I believe that this claim is plainly without merit.

In his equal protection claim, Derrickson argues that the Department's policies discriminate with regard to employment between inmates who are sentenced to life imprisonment and those who are not. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires "that no person shall be denied equal protection of the law by the states." Smith v. Coyne, 555 Pa. 21, 28-29, 722 A.2d 1022, 1025 (1999). Claims that a law violates the Equal Protection Clause are analyzed under one of three standards, depending on the classification involved. Id. Laws which classify individuals on the basis of a suspect classification are subjected to strict scrutiny. Id. Laws which classify individuals on the basis of a sensitive classification[1] are subject to intermediate scrutiny. Id. All other classifications are reviewed under the rational basis standard. Id. No case of this Commonwealth or of the United States Supreme Court has held that life-sentenced inmates constitute a protected class. Suspect classifications include race, national origin, and alienage; quasi-suspect classifications include gender and legitimacy. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985); Commonwealth v. Bullock, 590 Pa. 480, 493, 913 A.2d 207, 215 (2006). Such classifications do not include "life-sentenced inmates," and I note that Derrickson has made no argument as to why this list should be expanded to include life-sentenced inmates. Similarly, federal courts have also found that defendants accused of capital crimes are not a protected class, Tigner v. Cockrell, 264 F.3d 521, 526 (5th Cir. 2001), nor are prisoners are suspect class, Abdul-Akbar v. McKelvie, 239 F.3d 307, 317 (3d Cir. 2001); Roller v. Gunn, 107 F.3d 227, 233 (4th Cir. 1997).

[1] Sensitive classifications are also referred to as "quasi-suspect" classifications. Commonwealth v. Bullock, 590 Pa. 480, 493 n.6, 913 A.2d 215, n.6 (2006).

As the majority rightly points out, when a regulation does not implicate a suspect classification, the reviewing court should apply the two-part rational basis test and determine, first, whether there is a legitimate state interest and, second, whether the regulation is "reasonably related to promoting a legitimate state interest." Paz v. Pennsylvania Housing Finance Agency, 722 A.2d 762, 766 (Pa. Cmwlth. 1999). Further, "[u]nder the rational basis test, a classification is not violative of equal protection if *any state of facts can be conceived* to sustain the classification." Id. Additionally, a reviewing court is not limited to considering only those justifications offered by the government to support the challenged law, but may also consider, on its own initiative, legitimate goals that the law might serve. Id.; Small v. Horn, 554 Pa. 600, 616, 772 A.2d 664, 672 (1998) ("Under [the rational basis] test, the government need not have articulated the purpose or rationale supporting its action; it is enough that some rationale 'may conceivably . . . have been the purpose and policy of the relevant governmental decisionmaker") (quoting Nordlinger v. Hahn, 505 U.S. 1, 15 (1992)). I dissent because I believe that whether the Department's regulation rationally furthers a legitimate governmental purpose is a matter of law for the determination of which we do not need to remand this matter to the trial court.

The courts of this Commonwealth must accord a high degree of deference to the regulations of the Department. Commonwealth v. McGee, 560 Pa. 324, 332-33, 744 A.2d 754, 759 (2000) (citing Small v. Horn, 554 Pa. 600, 609, 722 A.2d 664, 669 (1998)). In this case, the Department advances "security and orderly prison administration" as legitimate goals behind its regulations. (Department's Br. at 8.) These are certainly legitimate goals in any penal setting. 37 Pa. Code § 91.2 (stating that the purposes of the Department include "provid[ing] protection to the

community [and] a safe and humane environment . . . for the inmates"); see also Smith v. Doe, 538 U.S. 84, 103 (2004) (holding that public safety is a legitimate, nonpunitive purpose); Turner v. Safley, 482 U.S. 78, 91-93 (1987) (holding that institutional security and safety are legitimate goals); Bell v. Horn, 762 A.2d 776, 779 (Pa. Cmwlth. 2000) (holding that "protecting the safety of the community" is a legitimate governmental purpose). The Department argues that "[t]he need to control the flow of inmates who present security concerns within the institution is inherently related to the need to maintain institutional security." (Department's Br. at 9.) Inmates sentenced to life in prison have, in general, committed more heinous crimes than inmates sentenced to lesser, definite terms. Additionally, life-sentenced inmates may feel they have less to lose than do other inmates. Therefore, the Department's conclusion that these inmates pose a greater security risk is not unreasonable, and its decision to limit the movement and concentration of these inmates in the work areas of the prison is rationally related to its goal of maintaining security.[2] Therefore, I believe Derrickson's equal protection claim is patently without merit, and the order of the trial court should be affirmed.

RENÉE COHN JUBELIRER, Judge

President Judge Leadbetter joins in this dissenting opinion.

[2] Additionally, since this Court is free to consider, on its own initiative, legitimate goals that the Department's regulation might serve, Paz, I note that one of the purposes of the Department is to provide "opportunities for rehabilitation for the inmates." 37 Pa. Code § 91.2. Inmates who are sentenced to less than life imprisonment have a greater chance of reentering the community than do inmates sentenced to life. Therefore, it rationally furthers the purpose of rehabilitating inmates to provide prison job opportunities to inmates who are more likely to reenter the community and need job skills.