

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

DENNIS MCKEITHAN,

Appellant

v.

C.O. HALE, ET AL.,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1877 MDA 2012

Appeal from the Order entered October 4, 2012,
in the Court of Common Pleas of Schuylkill County,
Civil Division, at No: S-2128-2012

BEFORE: PANELLA, ALLEN and COLVILLE*, JJ.

MEMORANDUM BY ALLEN, J.:

FILED MAY 29, 2013

Dennis McKeithan ("Appellant") appeals *pro se* from the order dismissing his habeas corpus petition as frivolous, and denying his petition to proceed *in forma pauperis* as moot. We affirm.

Appellant is incarcerated at SCI-Frackville. On October 2, 2012, he initiated this action against C.O. Hale, *et al.*, ("Appellees"), who are employees at SCI-Frackville, by filing a petition for writ of habeas corpus, and a petition to proceed *in forma pauperis*. Within his habeas corpus petition, Appellant alleged that he was subjected to cruel and unusual treatment. Appellant claimed that he was harassed by prison guards (who mistreated his personal property and tampered with his food by not wearing head/facial covers when serving food and failing to leave lids on trays),

*Retired Senior Judge assigned to the Superior Court.

deliberately placed with loud and disruptive mentally ill and/or racist inmates, and isolated from other "normal" and/or African American inmates.

By order dated October 4, 2012, the trial court determined that Appellant's habeas corpus petition was "frivolous pursuant to Pa.R.C.P. 240(j)" and dismissed the cause of action. The trial court also denied Appellant's petition to proceed *in forma pauperis* as moot.

Appellant filed a timely appeal. The trial court did not direct compliance with Pa.R.A.P. 1925(b). Although the trial court did not file a Pa.R.A.P. 1925(a) opinion, it filed an order on November 8, 2012 in which it averred that the order "filed October 4, 2012 is attached as the Trial Court Opinion pursuant to Pa.R.A.P. 1925." In its October 4, 2012 order, the trial court noted that "the filings of [Appellant] appear to be complaints about prison housing, and as such invoke matters solely within the jurisdiction of the prison authorities."

Our standard of review of a trial court's order denying a petition for writ of habeas corpus is limited to an abuse of discretion. ***Commonwealth ex rel. Fortune v. Dragovich***, 792 A.2d 1257, 1259 (Pa. Super. 2002). We may only reverse an order where the trial court has "misapplied the law or exercised its discretion in a manner lacking reason." ***Id.*** Moreover, if a trial court's decision to deny a petition for a writ of habeas corpus is correct, we may affirm on any ground. ***Commonwealth v. Miller***, 787 A.2d 1036, 1038 (Pa. Super. 2001).

We agree with the trial court that Appellant's allegations did not present a cognizable basis for habeas corpus relief. Appellant's petition raised unsubstantiated claims regarding prison conditions. We have explained:

The availability of *habeas corpus* in Pennsylvania is both prescribed and limited by statute. Subject to these provisions, the writ may issue only when no other remedy is available for the condition the petitioner alleges or available remedies are exhausted and ineffectual. Thus, ***habeas corpus should not be entertained...merely to correct prison conditions*** which can be remedied through an appeal to prison authorities or to an administrative agency. Moreover, it is not the function of the courts to superintend the treatment and discipline of prisoners in penal institutions. Accordingly, the writ may be used only to extricate a petitioner from illegal confinement or to secure relief from conditions of confinement that constitute cruel and unusual punishment.

Commonwealth ex rel. Fortune, 792 A.2d at 1259 (emphasis added) (citations omitted).

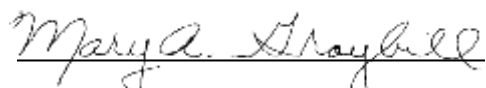
Here, Appellant has failed to demonstrate that he exhausted administrative remedies; in his brief he does not indicate whether he raised his claims with prison authorities or an administrative agency. Rather, Appellant generally asserts that his prison living conditions (unsanitary food service, inmate cell placement/confinement) constitute cruel and unusual punishment. ***See Commonwealth ex rel. Ford v. Jeffes***, 394 A.2d 1004, 1005 (Pa. Super. 1978) (conditions which are cruel and unusual must be shocking to the conscience).

It is well-settled that a habeas petitioner bears the burden of persuasion on appeal to demonstrate his entitlement to relief. **Id.** Appellant in this case, as with the appellant in **Fortune, supra**, failed to establish that his prison conditions constitute such “patent and serious deprivations” to establish cruel and unusual punishment. **See id.** at 1260 (allegations concerning prisoner placement do not rise to the level of cruel and unusual punishment and are therefore insufficient grounds for issuance of a writ of habeas corpus) citing **Meachum v. Fano**, 427 U.S. 215, 224-226, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976). **See also Balsamo v. Mazurkiewicz**, 611 A.2d 1250, 1253 (Pa. Super. 1992) (habeas corpus petition may be denied summarily and without a hearing if it fails to allege facts making out a prima facie case for issuance of the writ).

Given the foregoing, we find that the trial court did not err in dismissing Appellant’s petition for writ of habeas corpus and denying his petition to proceed *in forma pauperis*.

Order affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 5/29/2013