

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
BERNARD JERRY,		
Appellant		No. 1200 WDA 2014

Appeal from the Order Entered July 8, 2014  
In the Court of Common Pleas of Beaver County  
Criminal Division at No(s): CP-04-CR-0000196-1977, CP-04-CR-0000197-  
1997, CP-04-CR-0000317-1977

BEFORE: FORD ELLIOTT, P.J.E., PANELLA AND OLSON, JJ.

MEMORANDUM BY OLSON, J.:

**FILED DECEMBER 23, 2014**

Appellant, Bernard Jerry, appeals *pro se* from the order entered on July 8, 2014, denying his petition for the transfer of an inmate in need of medical treatment. We affirm.

On July 7, 2014, Appellant filed a petition for medical transfer in the Court of Common Pleas of Butler County. Within this petition, Appellant averred that, in 1977, he was convicted of murder, robbery, and conspiracy, and he was sentenced to life in prison. Appellant averred that he is now incarcerated in SCI-Greene. Appellant's Medical Transfer Petition, 7/7/14, at 1.

Within Appellant's medical transfer petition, Appellant claimed that he is suffering from hepatitis C and a "kidney disease." *Id.* According to Appellant, SCI-Greene "is ill equipped to meet [Appellant's] [] medical

needs, or diet.” **Id.** As such, Appellant filed a “[petition] pursuant to 42 Pa.C.S.A. § 9777,” seeking to be transferred from SCI-Greene to SCI-Laurel Highland. Appellant’s medical transfer petition declares that he wishes to be transferred to SCI-Laurel Highland because SCI-Laurel Highland “has the only dialysis treatment plan, staff[,] and facilities in the Pennsylvania State Prison setting, and they simultaneously [are] capable of treating [Appellant’s] kidney disease.” **Id.**

On July 8, 2014, the sentencing court denied Appellant’s petition without a hearing. Appellant then filed a timely notice of appeal.

Now on appeal, Appellant raises the following claim:

Whether [the sentencing] court erred [when it denied Appellant’s] medical transfer request?

Appellant’s Brief at ii.

As this Court has held, we “review the sentencing court’s denial of [a] petition for transfer of an inmate in need of medical treatment for an abuse of discretion.” **Commonwealth v. Folk**, 40 A.3d 169, 173 (Pa. Super. 2012). Thus, we will only reverse the sentencing court where the court “misapplies the law, or its judgment is manifestly unreasonable, or the evidence of record shows that its decision is a result of partiality, prejudice, bias, or ill will.” **Commonwealth v. Dunlavey**, 805 A.2d 562, 564 (Pa. Super. 2002) (internal quotations, citations, and corrections omitted).

Appellant claims that the sentencing court erred in dismissing the medical transfer petition that he filed under 42 Pa.C.S.A. § 9777.

Appellant's Brief at 2; Appellant's Medical Transfer Petition, 7/7/14, at 1. The claim fails.

Section 9777 allows a seriously ill inmate to petition the sentencing court and request that the court "temporarily defer service of [the inmate's] sentence" so that the inmate may be placed in "a hospital, long-term care nursing facility or hospice care location." 42 Pa.C.S.A. § 9777(a)(1).<sup>1</sup> The relevant portions of the statute provide:

**(a) Inmates committed to custody of department.**--If an inmate is committed to the custody of the [Department of Corrections], the department, the inmate or a person to whom the court grants standing to act on behalf of the inmate may petition the sentencing court to temporarily defer service of the sentence of confinement and temporarily remove the inmate committed to the custody of the department, or other facility, for placement in a hospital, long-term care nursing facility or hospice care location. The following shall apply:

(1) The sentencing court may approve the petitioner's request to temporarily defer service of the sentence of confinement and place the inmate in a hospital or long-term

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<sup>1</sup> As this Court has explained:

[Appellant's section 9777] claim is not contemplated under [Pennsylvania's Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546]. [Appellant] seeks a transfer or sentence modification to meet alleged medical needs; his petition does not challenge the propriety of his conviction or sentence, nor does he request relief available under the PCRA. Therefore, his petition is not subject to the eligibility requirements or time constraints imposed by the PCRA.

**Folk**, 40 A.3d at 172 n.4 (internal citations omitted).

care nursing facility under electronic monitoring by the department upon clear and convincing proof that all of the following apply:

(i) The medical needs of the inmate can be more appropriately addressed in the hospital or long-term care nursing facility.

(ii) The hospital or long-term care nursing facility requested by the petitioner has agreed to accept the placement of the inmate and to provide necessary medical care.

(iii) The inmate is seriously ill and is expected by a treating physician to not live for more than one year.

(iv) There are no writs filed or detainers lodged against the inmate and the inmate is not subject to any court order requiring the inmate's presence.

(v) The placement in the hospital or long-term care nursing facility does not pose an undue risk of escape or danger to the community. In making this determination, the sentencing court shall consider the inmate's institutional conduct record, whether the inmate was ever convicted of a crime of violence, the length of time that the inmate has been imprisoned and any other factors the sentencing court deems relevant.

(vi) The hospital or long-term care nursing facility has agreed to notify the department and the court of any material changes in the health status of the inmate, the nature of the care provided or other information required by the department.

(vii) Each agency representing the Commonwealth at a proceeding which resulted in an order committing or detaining the inmate, the State or local correctional facility housing the inmate and any registered crime victim have been given notice and an opportunity to be heard on the petition.

. . .

**(e) Petition requirements.**--Any petition filed pursuant to this section must aver:

(1) The name of the hospital, long-term care nursing facility or hospice care location proposed for placement.

(2) That the petitioner reasonably believes the named hospital, long-term care nursing facility or hospice care location has agreed to accept the placement of the inmate and the facts upon which that belief is based.

42 Pa.C.S.A. §§ 9777(a)(1) and (e).

This Court has held that – to plead a *prima facie* claim for relief under section 9777 – the inmate must plead “**all** seven factors” enumerated in section 9777(a)(1). **Folk**, 40 A.3d at 172-174 (emphasis in original). Where the petitioner fails to plead a *prima facie* claim for relief under section 9777, the petitioner is not, as a matter of law, entitled to obtain relief under the statute. **Id.** at 174; **see also Commonwealth v. Deaner**, 779 A.2d 578, 582 (Pa. Super. 2001) (construing 61 P.S. § 81).

In the case at bar, Appellant filed a medical transfer petition under 42 Pa.C.S.A. § 9777, seeking to be transferred from SCI-Greene to SCI-Laurel Highland. Yet, Section 9777 does not permit a sentencing court to approve an intra-institutional transfer request. Rather, the plain terms of Section 9777 only permit the sentencing court “to **temporarily defer service of the sentence of confinement** and **temporarily remove** the inmate committed to the custody of the department [of corrections], or other facility, for placement in a **hospital, long-term care nursing facility or hospice care location.**” 42 Pa.C.S.A. § 9777(a) (emphasis added).

SCI-Laurel Highlands is not “a hospital, long-term care nursing facility or hospice care location” – it is a prison.<sup>2</sup> **Id.** Further, even if SCI-Laurel Highlands were the type of facility contemplated by Section 9777, Appellant’s petition would still fail as a matter of law, as Appellant did not: 1) request that the sentencing court “temporarily defer service of the sentence of confinement and temporarily remove [Appellant] committed to the custody of the department [of corrections]” or 2) plead the seven factors that are contained in section 9777(a)(1). 42 Pa.C.S.A. § 9777(a)(1); **Folk,**

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<sup>2</sup> Section 9777 defines “hospital,” “hospice care location,” and “long-term care nursing facility” in the following manner:

“Hospital.” An entity licensed as an acute-care general hospital, a specialty hospital or a rehabilitation hospital under the act of July 19, 1979 (P.L. 130, No. 48), known as the Health Care Facilities Act.

. . .

“Hospice care location.” A home, independent living environment or inpatient setting that provides a coordinated program of palliative and supportive services through a licensed hospice care provider.

. . .

“Long-term care nursing facility.” A long-term care nursing facility as defined under section 802.1 of the act of July 19, 1979 (P.L. 130, No. 48), known as the Health Care Facilities Act.

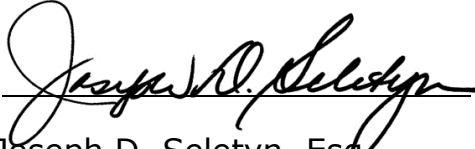
42 Pa.C.S.A. § 9777(g) (internal footnote omitted).

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40 A.3d at 172-174. Therefore, the sentencing court did not err when it dismissed Appellant's petition without a hearing.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/23/2014