

COMMONWEALTH COURT OF PENNSYLVANIA

Sean Burton v. John E. Wetzel (Secretary of Corrections)

No. 130 M.D. 2021 (Pa. Commw. Ct. Feb. 10 2022) (Commonwealth Court of Pennsylvania 2022) · No. No. 130 M.D. 2021 · Decided February 10, 2022

SUMMARY

The Pennsylvania Commonwealth Court sustained the Secretary of Corrections’ preliminary objection and dismissed Sean Burton’s petition challenging deductions from his inmate account for court-ordered restitution. The court held that a request to modify or terminate a restitution obligation must be directed to the sentencing court, and dismissal was appropriate because the proper criminal-case party was not named.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Anne E. Covey; Renée Cohn Jubelirer; Christine Fizzano Cannon
JURISDICTION	Pennsylvania
DECIDED	February 10, 2022
DOCKET	No. 130 M.D. 2021
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner filed a petition for review in the Commonwealth Court's original jurisdiction seeking termination of a restitution order and reimbursement of deductions from his inmate account. The Secretary of Corrections filed a preliminary objection asserting that any request to modify the restitution obligation had to be directed to the sentencing court.
STANDARD OF REVIEW	On preliminary objections in the nature of a demurrer, the court accepts as true all well-pleaded material allegations and reasonable inferences, but not legal conclusions, unwarranted inferences, argumentative allegations, or opinions. The objection is sustained only when it is certain that the law will not permit recovery; the court confines its analysis to the petition and may consider documents attached to it.
PRECEDENTIAL VALUE	Nonprecedential unpublished memorandum opinion
PARTIES	Sean Burton v. John E. Wetzel, Secretary of Corrections

TOPICS

[restitution](#)[motions to dismiss](#)[civil procedure](#)[criminal procedure](#)[post-conviction relief](#)

PRACTICE AREAS

[Pennsylvania civil procedure](#)[criminal restitution](#)[post-conviction relief](#)[prisoner litigation](#)

QUESTIONS PRESENTED

1. Whether a prisoner may use a civil petition for review seeking an injunction against the Department of Corrections to terminate or modify a restitution obligation imposed as part of a criminal sentence.
2. Whether the Commonwealth Court should transfer the petition to the sentencing court under 42 Pa.C.S. § 5103(a) when the proper criminal-party representative, the District Attorney, is not named in the petition.

HOLDINGS

1. A request by an inmate to end Act 84 deductions by removing or modifying a financial obligation imposed in the original criminal sentence must be presented to the sentencing court, not pursued as a civil action seeking injunctive relief against the Department of Corrections.
2. The Commonwealth Court must dismiss, rather than transfer, a petition seeking modification of a criminal restitution order when the proper party to the criminal matter is not named in the petition.

KEY QUOTATIONS

“[I]f an inmate seeks to end [what is commonly known as] Act 84 deductions by removing financial obligations from his original sentence, the request to modify sentence should be heard by the common pleas court regardless of the place of confinement.” (3)

FACTUAL BACKGROUND

A jury found Sean Burton guilty of first-degree murder on March 21, 2011, and the Delaware County Court of Common Pleas sentenced him to life imprisonment without parole on May 24, 2011. The sentencing court ordered Burton to pay \$8,254.79 in restitution to Cathy Stropas, the victim's mother, for funeral expenses. Stropas died on January 13, 2015, but the Department of Corrections began deducting money from Burton's inmate account on May 13, 2015, including family gifts and inmate pay, to satisfy the restitution obligation.

PROCEDURAL HISTORY

A Delaware County jury convicted Burton of first-degree murder, and the Delaware County Court of Common Pleas sentenced him to life imprisonment without parole and ordered him to pay restitution. After Burton learned that the restitution recipient had died, he filed an original-jurisdiction petition in the Commonwealth Court seeking to terminate the restitution order and recover deducted funds. The Commonwealth Court sustained the Secretary's preliminary objection and dismissed the petition rather than transferring it because the proper criminal-party representative, the District Attorney, was not named in the caption.

DISPOSITION

dismissed

CASES CITED

- Torres v. Beard, 997 A.2d 1242, 1245 (Pa. Cmwlth. 2010)
- Allen v. Department of Corrections, 103 A.3d 365, 369 (Pa. Cmwlth. 2014)
- Foxe v. Pennsylvania Department of Corrections, 214 A.3d 308, 311 n.1 (Pa. Cmwlth. 2019)
- Commonwealth v. Parella, 834 A.2d 1253, 1256 (Pa. Cmwlth. 2003)
- Commonwealth v. Lyons, 830 A.2d 663, 665 (Pa. Cmwlth. 2003)
- Commonwealth v. Burke, 801 A.2d 1257 (Pa. Super. 2002)
- Commonwealth v. Jury, 636 A.2d 164 (Pa. Super. 1993)
- Borsello v. Colleran, 833 A.2d 1213, 1215 (Pa. Cmwlth. 2003)

OPINION

PER CURIAM.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA Sean Burton,: Petitioner: v.: John E. Wetzel (Secretary of: Corrections),: No. 130 M.D. 2021 Respondent: Submitted: December 17, 2021 BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge1 HONORABLE ANNE E. COVEY, Judge HONORABLE CHRISTINE FIZZANO CANNON, Judge OPINION NOT REPORTED MEMORANDUM OPINION BY JUDGE COVEY FILED: February 10, 2022 Before this Court is the Pennsylvania Department of Corrections (DOC) Secretary John E. Wetzel's (Respondent) Preliminary Objection to Sean Burton's (Petitioner) Petition for Review (Petition) filed in this Court's original jurisdiction.

After review, this Court sustains the Preliminary Objection and dismisses the Petition. Facts On March 21, 2011, a jury found Petitioner guilty of first-degree murder, and, on May 24, 2011, the Delaware County Common Pleas Court (sentencing court) sentenced him to life imprisonment without parole. See Petition ¶ 1; see also Petition Ex. B. The sentencing court ordered Petitioner to pay restitution to Cathy Stropas, the victim/decedent's mother, in the amount of 1 This case was assigned to the opinion writer before January 7, 2022, when Judge Cohn Jubelirer became President Judge. \$8,254.79 for funeral expenses.

See *id.* Petitioner recently discovered that Cathy Stropas passed away on January 13, 2015. See Petition ¶ 3; see also Petition Ex. A. Notwithstanding, DOC began making deductions from Petitioner's inmate account on May 13, 2015, for the funeral expenses. See *id.* Specifically, DOC has been taking deductions from the nominal gifts of money Petitioner's family and friends have sent to his account, as well as his inmate pay, which is \$55.00 per month.

See Petition ¶ 2. On April 19, 2021, Petitioner filed the Petition requesting that “this Honorable Court issue an ORDER terminating the order of the [sentencing] court and reimburse all the funds taken from [P]etitioner’s inmate account with interest.” Petition at 2. By July 8, 2021 Order, this Court directed Respondent “to file an answer or otherwise plead within 30 days from the exit date of this order.” Id. On August 5, 2021, Respondent filed the Preliminary Objection, alleging that Petitioner’s request to terminate his restitution obligation must be directed to the sentencing court.

Discussion In ruling on preliminary objections, we must accept as true all well-pleaded material allegations in the petition for review, as well as all inferences reasonably deduced therefrom. The Court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion.

In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain them. A preliminary objection in the nature of a demurrer admits every well-pleaded fact in the [petition for review in the nature of a] complaint and all inferences reasonably deducible therefrom.

It tests the legal sufficiency of the challenged pleadings and will be sustained only in cases where the pleader has clearly failed to state a claim for 2 which relief can be granted. When ruling on a demurrer, a court must confine its analysis to the [petition for review in the nature of a] complaint. *Torres v. Beard*, 997 A.2d 1242, 1245 (Pa. Cmwlth. 2010) (emphasis added; citations omitted). “[C]ourts reviewing preliminary objections may not only consider the facts pled in the [petition for review], but also any documents or exhibits attached to it.” *Allen v. Dep’t of Corr.*, 103 A.3d 365, 369 (Pa.

Cmwlth. 2014).” *Foxe v. Pa. Dep’t of Corr.*, 214 A.3d 308, 311 n.1 (Pa. Cmwlth. 2019). Here, Respondent argues that the Petition should be dismissed because Petitioner must seek modification of his restitution order by filing a motion with the sentencing court, rather than by a civil action seeking an injunction against Respondent. This Court has explained: “[I]f an inmate seeks to end [what is commonly known as] Act 84 deductions by removing financial obligations from his original sentence, the request to modify sentence should be heard by the common pleas court regardless of the place of confinement.”² *Commonwealth v. Parella*, 834 A.2d 1253, 1256 (Pa.

Cmwlth. 2003) (emphasis added). 2 On June 18, 1998, the General Assembly passed Act 84, which amended Section 9728 of the Sentencing Code, 42 Pa.C.S. § 9728, by adding subsection (b) (5). Section 9728(b)(5) of the Sentencing Code permits DOC to collect fines, costs, and restitution from inmate prison accounts and forward the funds to the sentencing county. Section 9728(b)(5) of the Sentencing Code states, in relevant part: Deductions shall be as follows: (i) [DOC] shall make monetary deductions of at least 25% of deposits made to inmate wages and personal accounts for the purpose of collecting restitution,... and any other court-ordered obligation. (ii) [DOC] shall: (A) Be authorized to make monetary deductions from inmate wages and personal accounts for the

purpose of collecting restitution,... and any other court-ordered obligation or fees owed to the county jail or prison related to the inmate's incarceration.

3 An offender may request modification of a sentence in one of several ways: 1) a motion for modification of the sentence under [Pennsylvania Rule of Criminal Procedure] 720, which must be made within 10 days of the imposition of sentence; 2) a direct appeal of the sentence under [Pennsylvania Rules of Appellate Procedure] 901- 911, notice of which must be given within 30 days of the imposition of sentence; 3) a petition for postconviction relief under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541[-]9546, which must be filed within one year of the date the judgment of sentence becomes final; or 4) a petition to amend an order of mandatory restitution made during a sentencing hearing, which may be filed at any time.

[See Section 1106(c)(2)(iii) of the Crimes Code,] 18 Pa.C.S. § 1106(c)(2)(iii); see *Comm[onwealth] v. Burke*, 801 A.2d 1257 (Pa. Super. 2002). *Commonwealth v. Lyons*, 830 A.2d 663, 665 (Pa. Cmwlth. 2003) (emphasis added).

Because Petitioner “has clearly failed to state a claim for which relief can be granted” by this Court, Respondent’s Preliminary Objection is sustained. *Torres*, 997 A.2d at 1245. This Court acknowledges that, pursuant to Section 5103(a) of the Judicial Code: “A matter which is within the exclusive jurisdiction of a court... of this Commonwealth but which is commenced in any other tribunal of this Commonwealth shall be transferred by the other tribunal to the proper court... of this Commonwealth....” 42 Pa.C.S. § 5103(a) (emphasis added).

However, in the instant case, Respondent is not a party to the criminal action at the criminal docket. Rather, the Commonwealth’s interests in the criminal matter are represented by the District Attorney. See *Commonwealth v. Jury*, 636 A.2d 164 (Pa. Super. 1993).

Because the District Attorney is not named in the caption of Petitioner’s (B) Deduct an amount sufficient to satisfy any outstanding restitution,... or other court-ordered obligations before releasing funds on deposit. 42 Pa.C.S. § 9728(b)(5). 4 Petition, rather than transfer the matter to the sentencing court, this Court must dismiss the Petition. See *Borsello v. Colleran*, 833 A.2d 1213, 1215 (Pa.

Cmwlth. 2003) ([T]rial court did not err in not transferring case to this Court because, inter alia, “the [Pennsylvania] Board [of Probation and Parole, the proper party,] is not a party named in the caption of the petitioner’s petition.”).

For all of the above reasons, Respondent’s Preliminary Objection is sustained, and the Petition is dismissed. _____ ANNE E. COVEY, Judge 5 IN THE COMMONWEALTH COURT OF PENNSYLVANIA Sean Burton,: Petitioner: v.: John E. Wetzel (Secretary of: Corrections);: No. 130 M.D. 2021 Respondent: ORDER AND NOW, this 10th day of February, 2022, the Pennsylvania Department of Corrections Secretary John E. Wetzel’s

Preliminary Objection to Sean Burton's Petition for Review (Petition) is SUSTAINED, and the Petition is DISMISSED. _____ ANNE E. COVEY, Judge

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