

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mark Whitaker, :
 :
 Petitioner :
 :
 v. : No. 1781 C.D. 2012
 :
 : Submitted: January 25, 2013
 Pennsylvania Department of :
 Corrections, :
 Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: March 8, 2013

Mark Whitaker (Requester) petitions, pro se, for review of the August 23, 2012 final determination of the Office of Open Records (OOR) upholding the denial of his request for certain information from the Pennsylvania Department of Corrections (Department) under the Pennsylvania Right-to-Know Law (RTKL).¹ We affirm.

Requester is currently incarcerated at the State Correctional Institution at Coal Township (SCI-Coal Township). On June 18, 2012, Requester submitted a written request for information to the Department, seeking “a copy of [his] ‘Written Judgment of Sentence Order’ that imposed a life sentence ... [at] case #CP-51-CR-

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101-67.3104.

0413791-2002.” (Request at 1.) The Department notified Requester that it needed an additional thirty days to respond and thereafter denied the request by letter dated July 24, 2012. In this letter, the Department informed Requester that no responsive record exists.

Requester filed an appeal to the OOR, and the OOR invited the parties to supplement the record. On August 6, 2012, the Department submitted a position statement and an attestation signed by Michelle Kodack, the Records Supervisor at SCI-Coal Township. In pertinent part, Kodack’s attestation states:

I, Michelle Kodack, hereby declare under the penalty of perjury, pursuant to 18 Pa. C.S. §4904, that the following statements are true and correct based upon my personal knowledge, information, and belief:

I am employed by [the Department] as Records Supervisor at [SCI-Coal Township]. If the specific record requested ... by [Requester] were in the possession of this institution, the record would be retained as an official record in files within my custody.

After a reasonable search, I have determined that the ... requested record does not exist within my custody, possession or control.

(Kodack’s Attestation at 1.)

On August 23, 2012, the OOR issued a final determination upholding the Department’s denial of the request. The OOR reasoned as follows:

Under the RTKL, an attestation may serve as sufficient evidence of the nonexistence of records. See Sherry v. Radnor Township School District, 20 A.3d 515, 520-21 (Pa. Cmwlth. 2011); Moore v. OOR, 992 A.2d 907, 909 (Pa. Cmwlth. 2010). Based on the evidence provided, the OOR finds that the Department established that no responsive records exist. Consequently, the appeal is denied.

(OOR's Final Determination at 1.) Requester filed a timely petition for review with this Court.²

On appeal, Requester does not challenge the OOR's final determination upholding the Department's denial of his request. Instead, Requester argues that since the Department is not in possession of a sentencing order, it has no authority to detain him at SCI-Coal Township. Requester asserts that he is serving an illegal sentence and asks this Court to release him from confinement.

The RTKL is a statute that grants citizens, in certain specified circumstances, the right to obtain public records from government agencies, "in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions." Bowling v. Office of Open Records, 990 A.2d 813, 824 (Pa. Cmwlth. 2010) (en banc), appeal granted in part, 609 Pa. 265, 15 A.3d 427 (2011). If an individual requests a public record and a government agency denies the request, the individual can appeal the decision to a trial court or the OOR and then to this Court. See sections 1101, 1301 and 1302 of the RTKL, 65 P.S. §§67.1101, 1301 and 1302.

However, the RTKL is not a vehicle through which an individual can collaterally attack the legality of his criminal confinement. The RTKL does not contain any statutory provisions or procedures providing an individual with a right or avenue to declare his underlying judgment of sentence a legal nullity. Indeed, our

² We independently review a determination of the OOR and may substitute our own findings of fact for that of the agency. Our scope of review is plenary. Hodges v. Pennsylvania Department of Health, 29 A.3d 1190, 1192 n.6 (Pa. Cmwlth. 2011).

Supreme Court has held that the Post-Conviction Relief Act³ is the exclusive state-law remedy for prisoners challenging sentences that are allegedly illegal. Commonwealth v. Hall, 565 Pa. 92, 771 A.2d 1232 (2001).⁴ Because Requester does not contest the denial of his RTKL request and seeks relief that is beyond the purview of the RTKL, this Court has no basis upon which to disturb the OOR's final determination.⁵

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

³ Sections 9541 through 9546 of the Judicial Code, 42 Pa. C.S.A. §§9541-9546.

⁴ See also Guarrasi v. Scott, 25 A.3d 394, 402 (Pa. Cmwlth. 2011) (concluding that plaintiff could not maintain a declaratory judgment action against various defendants following the denial of a RTKL request because the plaintiff's claims amounted to a collateral attack to his criminal conviction and the Post-Conviction Relief Act "is the sole means by which persons ... serving illegal sentences may obtain collateral relief.").

⁵ In any event, we note that under the RTKL, an agency is not required to create a record if the requested record does not exist. Hodges, 29 A.3d at 1192. In Hodges, this Court found that an affidavit from a records custodian, signed under the penalty of perjury, was sufficient to satisfy an agency's burden to prove that a requested record does not exist in its possession. Id. at 1192-93.

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	:	
Respondent	:	

ORDER

AND NOW, this 8th day of March, 2013, the August 23, 2012 final determination of the Office of Open Records is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge