

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Hugh Williams,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Tom Corbett, Governor	:	
and John Wetzel, Secretary of the	:	
Department of Corrections,	:	No. 411 M.D. 2014
Respondents	:	Submitted: January 2, 2015

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY

FILED: April 8, 2015

Pennsylvania Governor Tom Corbett and the Department of Corrections (Department) Secretary John Wetzel (collectively, Respondents) filed preliminary objections in the nature of a demurrer to Hugh Williams’ (Williams) pro se petition for review (Petition) filed in this Court’s original jurisdiction seeking declaratory and injunctive relief. There are two issues before this Court: (1) whether Williams has standing to bring this action; and (2) whether Williams’ Petition states a claim upon which relief may be granted. After review, Respondents’ preliminary objections are sustained.

Williams is an inmate at State Correctional Institution (SCI)–Graterford where he is serving a life sentence for a criminal homicide conviction ordered in 1972. Williams was assigned and is currently residing in a cell designed and built for single occupancy. On June 10, 2014, Williams received a memorandum advising all inmates who were occupying single cells to find suitable cell-mates in preparation for

the Department's closure of SCI-Graterford and the opening of two recently-built prisons - Phoenix East and Phoenix West (collectively, SCI-Phoenix) scheduled for 2015. SCI-Phoenix cells are not equipped for single occupancy.

Williams commenced this action on August 6, 2014 by filing a petition for review in the nature of a complaint seeking declaratory and injunctive relief concerning his right under Pennsylvania law and Department policy to a single-occupancy cell. On August 14, 2014, this Court sent a Defect Correction Notice to Williams advising him that he owed a \$10.00 balance for his filing fee due to the Court's recent fee increase. Thereafter, by September 3, 2014 Order, this Court directed Respondents to file an answer or otherwise plead within 30 days of the Order. On October 3, 2014, Respondents filed preliminary objections in the nature of a demurrer to Williams' Petition. On October 27, 2014, Williams opposed Respondents' preliminary objections.

This Court's review of preliminary objections is limited to the pleadings. *Pa. State Lodge, Fraternal Order of Police v. Dep't of Conservation & Natural Res.*, 909 A.2d 413 (Pa. Cmwlth. 2006), *aff'd*, 924 A.2d 1203 (Pa. 2007).

[This Court is] required to accept as true the well-pled averments set forth in the . . . complaint, and all inferences reasonably deducible therefrom. Moreover, the [C]ourt 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, where any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections.

Id. at 415-16 (citations omitted).

Background

Pennsylvania Law

The 1939 Penal Code [(Penal Code)] defined murder and voluntary manslaughter in pertinent part, as follows:

Section 701. Murder of the First and Second Degree.

-All murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration of, or attempting to perpetrate any arson, rape, robbery, burglary, or kidnapping, shall be murder in the first degree. All other kinds of murder shall be murder in the second degree. . . .

Whoever is convicted of the crime of *murder of the first degree* is guilty of a felony and shall be sentenced to suffer death in the manner provided by law, or to undergo *imprisonment for life*, at the discretion of the jury trying the case, which shall fix the penalty by its verdict. . . .

Whoever is convicted of the crime of *murder of the second degree* is guilty of a felony, and shall, for the first offense, be sentenced to undergo *imprisonment by separate or solitary confinement* not exceeding twenty (20) years, or fined not exceeding ten thousand dollars, or both, and for the second offense, shall undergo imprisonment for the period of his natural life.

. . . .

Act of June 24, 1939, P.L. 872, . . . 18 P.S. §[] 4701 In 1972, the Crimes Code was enacted which set forth the statutory definition of voluntary manslaughter. Criminal homicide is defined as follows:

§ 2501. Criminal homicide

(a) **Offense defined.**-A person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being.

(b) **Classification.**-Criminal homicide shall be classified as

murder, voluntary manslaughter, or involuntary manslaughter.

18 Pa.C.S. § 2501.

Commonwealth v. Browdie, 671 A.2d 668, 671-72 n.2 (Pa. 1996) (double emphasis added); Petition, Ex. B. Williams was convicted in 1972 and sentenced in March of 1973. The Crimes Code was not effective until June of 1973, at which time Section 701 of the Penal Code was repealed. The Crimes Code is silent regarding solitary confinement. See 42 Pa.C.S. § 9711.

Department Policy

The “Bill of Rights” for prisoners in the state correctional institutions (BC-ADM-001) was adopted and approved by the Department effective October 1, 1971. See Petition, Ex. C. The “[s]ubject” of BC-ADM-001 is “STANDARD MINIMUM RULES FOR TREATMENT OF PRISONERS” and states in relevant part:

Accommodation

(1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

Petition, Ex. C at 2. Policy number DC-ADM 001 was issued August 29, 2005, effective September 29, 2005 (2005 DC-ADM 001), and it supersedes “DC-ADM 001 . . . issued December 29, 2001 [(2001 DC-ADM 001)].”¹ Petition, Ex. D at 2.

¹ Williams asserts that BC-ADM-001 was replaced by 2005 DC-ADM 001. He contends that since 2005 DC-ADM 001 does not state that it supersedes BC-ADM-001, 2005 DC-ADM 001 “is void[.]” Petition ¶ 22. Indeed, 2005 DC-ADM-001 specifically states that it supersedes “[2001 DC-ADM 001].” Petition, Ex. D at 2. Williams attached only BC-ADM-001 and 2005 DC-ADM

Standing

In Pennsylvania, a party seeking judicial resolution of a controversy ‘must establish as a threshold matter that he has standing to maintain the action.’ *Fumo v. City of Philadelphia*, . . . 972 A.2d 487, 496 ([Pa.] 2009). Unlike the federal courts, which derive their standing requirements from Article III of the United States Constitution, standing for Pennsylvania litigants has been created judicially. *Id.* at 500 n.5. ‘The core concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not aggrieved thereby and has no standing to obtain a judicial resolution to his challenge.’ *Id.* (citing *Wm. Penn Parking Garage [v. City of Pittsburgh]*, 346 A.2d [269,] 280–81 [(Pa. 1975)]).

An individual can demonstrate that he has been aggrieved if he can establish that he has a substantial, direct and immediate interest in the outcome of the litigation. **A party has a substantial interest in the outcome of litigation if his interest surpasses that of all citizens in procuring obedience to the law. The interest is direct if there is a causal connection between the asserted violation and the harm complained of; it is immediate if that causal connection is not remote or speculative.**

Fumo, 972 A.2d at 496 (internal citations and quotations omitted).

Johnson v. Am. Standard, 8 A.3d 318, 329 (Pa. 2010) (emphasis added).

In the instant case, Williams alleges that eliminating single-occupancy cells violates both Section 701 of the Penal Code and BC-ADM-001. Because Williams will be directly affected by the alleged violations in that he will no longer enjoy a single-occupancy cell, he has a substantial interest in the litigation. Further, since the loss of his enjoyment of a single-occupancy cell is imminent in that once he

001 to his Petition. Williams made no reference to 2001 DC-ADM 001 in his pleadings nor did he attach it to his Petition.

is transferred to SCI-Phoenix single-occupancy cells will no longer be an option, Williams' interest is immediate. However, in order for Williams' interest to be direct there needs to be a causal connection between the asserted violation and Williams' alleged injury.

Respondents argue that Williams does not have standing to bring this action because he has not suffered an actual injury. Williams retorts that because the transfer from SCI-Graterford to SCI-Phoenix and corresponding elimination of single-occupancy cells is imminent, the violation of Section 701 of the Penal Code and BC-ADM-001 is not remote or speculative. Williams appears to be arguing that a violation of the law is a harm *per se*. However,

the doctrine of hardship *per se* is confined to preliminary injunctions for parties who already have standing, and appears to never have been applied to the issue of standing itself. *See Pub. Util. Comm'n[] v. Israel*, . . . 52 A.2d 317 ([Pa.] 1947); *Stilp v. Com[monwealth]*, 910 A.2d 775 (Pa.[]Cmwlth.[]2006); *Council 13 v. Casey*, . . . , 595 A.2d 670 ([Pa. Cmwlth.] 1991). Because [Williams] lack[s] standing, [he] cannot avail [himself] of the doctrine of hardship *per se*.

Nat'l Rifle Ass'n v. City of Pittsburgh, 999 A.2d 1256, 1260 (Pa. Cmwlth. 2010). Thus, although Williams residing in a double-occupancy cell may be imminent, any harm Williams may suffer as a result thereof is not. In fact, nowhere in Williams' Petition does he allege a harm other than the violation of Section 701 of the Penal Code and BC-ADM-001. "A party has a direct interest in a dispute if he or she **was harmed** by the challenged action or order." *Szoko v. Twp. of Wilkins*, 974 A.2d 1216, 1220 (Pa. Cmwlth. 2009) (emphasis added). Because Williams has not alleged

any harm as a result of residing in a double-occupancy cell, he does not have standing to bring the current action.²

For all of the above reasons, Respondents' preliminary objections are sustained.

ANNE E. COVEY, Judge

² Because we hold that Williams lacks standing to bring this action we need not address Respondents' additional preliminary objections. Notwithstanding, even if Williams had standing he has failed to state a claim for which relief can be granted because Section 701 of the Penal Code does not mandate that individuals sentenced to life imprisonment for murder in the first degree be housed by separate or solitary confinement, and Williams' claim that 2005 DC-ADM 001 replaced BC-ADM-001 cannot stand because 2005 DC-ADM 001 expressly states that it replaced 2001 DC-ADM 001, not BC-ADM-001. *See* Petition, Ex. D at 2. Further, since Williams has failed to state a claim for which relief can be granted under Pennsylvania law or Department policy, he has no claim with respect to Respondents.

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ORDER

AND NOW, this 8th day of April, 2015, Pennsylvania Governor Tom Corbett, and the Department of Corrections' Secretary John Wetzel's Preliminary Objections to Hugh Williams' Petition for Review are SUSTAINED. Accordingly, Hugh Williams' Petition for Review is DISMISSED.

ANNE E. COVEY, Judge