

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

ALTON D. BROWN

Appellant

v.

JOHN E. WETZEL, ET AL

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2141 MDA 2014

Appeal from the Order Entered on December 8, 2014  
In the Court of Common Pleas of Huntingdon County  
Civil Division at No.: 2014-01506

BEFORE: BENDER, P.J.E., ALLEN, J., and WECHT, J.

MEMORANDUM BY WECHT, J.:

**FILED JULY 31, 2015**

Alton D. Brown, *pro se*, challenges the trial court's December 8, 2014 order denying, *inter alia*, his request for *in forma pauperis* ("IFP") status. Brown sought such status in order to pursue a writ of *habeas corpus* against the following agents of the Department of Corrections: John E. Wetzel, Wexford Health Source Inc., Christopher Oppman, and Kevin Kauffman. Finding a writ of *habeas corpus* to be the incorrect avenue for Brown's petition, the trial court treated Brown's petition for a writ of *habeas corpus* as prison conditions litigation pursuant to the Prison Litigation Reform Act ("PLRA"). Although we agree with the trial court's reasoning, in the interests of justice, we will review Brown's claim both as a petition for a writ of *habeas corpus* and prison conditions litigation pursuant to the PLRA. We affirm.

The trial court set forth the following pertinent factual and procedural history:

[Brown] is an inmate at the State Correctional Institution at Smithfield (SCI-S) in Huntingdon County, Pennsylvania, and he is well known throughout the courts of this Commonwealth as an abusive litigator. On December 4, 2014, [Brown] filed his latest frivolous pleading with [the trial court], styled as a petition for writ of *habeas corpus*. In his petition, [Brown] averred, among other things, that prison conditions at SCI-S have exacerbated his medical conditions, which include the following: hepatitis-C, chronic obstructive pulmonary disease (COPD), urinary tract and gastrointestinal concerns, a shoulder injury, skin infections, stress production, medical nutrition[,] and disease [*sic*].

In [the trial court's] order dated December 8, 2014, [the trial court] dismissed the petition on the grounds that it lacked an arguable basis in law or fact, and [the trial court] indicated that the Commonwealth Court of Pennsylvania had labeled [Brown] as an abusive litigator pursuant to 42 Pa.C.S. § 6602(f)(1).

Trial Court Opinion ("T.C.O."), 2/2/2015, at 1-2 (capitalization omitted and italics added).

On December 16, 2014, Brown filed a notice of appeal. On December 26, 2014, the trial court directed Brown to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), which Brown timely filed on January 9, 2015. On February 2, 2015, the trial court filed an opinion pursuant to Pa.R.A.P. 1925(a) in response to Brown's concise statement.

Brown raises two issues on appeal:

- I. Whether [the] trial court erred in its holding that the petition for writ of *habeas corpus* lacked an arguable basis in law or fact, and thus [was] frivolous?

II. Whether [the] trial court abused its discretion in [denying] *in forma pauperis* status?

Brief for Brown at 1 (capitalization omitted).

Preliminarily, we note that Brown's appeal is styled as petition for writ of *habeas corpus*; however, the substance of Brown's claim does not challenge the fact or duration of his confinement. Rather, Brown's claim challenges the conditions of that confinement. Nonetheless, we acknowledge that a writ of *habeas corpus* may be used to secure relief from conditions of confinement that constitute "cruel and unusual punishment." ***Commonwealth ex rel. Fortune v. Dragovich***, 792 A.2d 1257, 1259 (Pa. Super 2002). Brown's general allegations of poor living conditions, lack of medical treatment, and malnutrition, however, do not rise to the level of "cruel and unusual punishment." ***Compare with Commonwealth ex rel. Bryant v. Hendrick***, 280 A.2d 110, 117 (Pa. 1971) (finding conditions constituted "cruel and unusual punishment" at a county prison where the inmate's personal safety was in danger because the conditions were "cruel, degrading, and disgusting").

"[H]abeas 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." ***Dragovich***, 792 A.2d at 1259 (quoting ***Hendrick***, 280 A.2d at 113). Accordingly, we will review Brown's

petition,<sup>1</sup> like the trial court, as “prisoner conditions litigation” pursuant to PLRA, which is defined as:

A civil proceeding arising in whole or in part under Federal or State law with respect to the conditions of confinement or the effects of actions by a government party on the life of an individual confined in prison. The term includes an appeal. The term does not include criminal proceedings or *habeas corpus* proceedings challenging the fact or duration of confinement in prison.

42 Pa.C.S. § 6601.

The trial court highlighted Brown’s well-documented litigious history as well as his status as an abusive litigator pursuant to 42 Pa.C.S. § 6602(f)(1), which consequently subjects Brown to the “three strikes rule” of the PLRA. T.C.O. at 1-2. Section 6602(f) provides as follows:

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<sup>1</sup> We note that the named Appellees, acting in their official duties, are government officials. As such, jurisdiction over this case properly lies with the Commonwealth Court, which has primary appellate jurisdiction over “claims against the Commonwealth, its agencies, and its officers.” **Hill v. Pennsylvania Dep’t of Env’tl. Prot.**, 679 A.2d 773, 773-74 (Pa. 1996) (citing 42 Pa.C.S. § 761(a)). However, having so concluded, it nonetheless is within our discretion to determine whether transfer to that court is appropriate. “We may retain jurisdiction if such action would serve the interests of judicial economy, but should transfer the matter if to do so would serve other interests, such as avoiding the establishment of possibly conflicting lines of authority.” **Wilson v. Sch. Dist. Of Phila**, 600 A.2d 210, 213 (Pa. Super. 1991) (citing **Lara, Inc. v. Dorney Park Coaster Co., Inc.**, 534 A.2d 1062, 1066 (Pa. Super 1987), and authorities cited therein). Because the Appellees have not objected to our jurisdiction, and because our determination of this matter serves the interests of judicial economy, we decline to transfer the case to the Commonwealth Court.

**Abusive litigation.**—If the prisoner has previously filed prison conditions litigation and:

- (1) three or more of these prior civil actions have been dismissed [as frivolous or malicious or for failure to state a claim upon which relief may be granted] pursuant to subsection (e)(2); or
- (2) the prisoner has previously filed prison conditions litigation against a person named as a defendant in the instant action or a person serving in the same official capacity as a named defendant in the instant action and a court made a finding that the prior action was filed in bad faith or that the prisoner knowingly presented false evidence or testimony at a hearing of trial[.]

42 Pa.C.S. § 6602(f). A prisoner’s PLRA petition is exempt from the “three strikes rule” if the prisoner makes a credible allegation that he is in imminent danger of serious bodily injury. 42 Pa.C.S.A. § 6602(f)(2). To that end, the record supports, and we agree with the trial court’s finding that Brown has made no credible allegation that he is in imminent danger of serious bodily injury:

Although [Brown] failed to substantiate his averments by attaching credible medical documentation or any other form of extrinsic evidence to the petition, he extensively discusses alleged tactics employed by defendants in denying him adequate care or medical attention. [Brown’s] petition is rife with legal catch phrases, but insufficient when it comes to actual medical documentation. In fact, his attachments to his “Memorandum of Law in Support of Petition of Writ of *Habeas Corpus*” conclusively show that the Department of Corrections has made every effort to treat [Brown’s] ailments and to comply with both his real and perceived medical needs.

T.C.O. at 3 (capitalization modified; italics added).

In a substantially similar situation in ***Pew v. Mechling***, 929 A.2d 1214 (Pa. Cmwlth. 2007), the Commonwealth Court<sup>2</sup> affirmed the trial court’s dismissal of the prisoner’s *habeas corpus* petition where the prisoner failed to provide any credible allegations that he was in imminent danger of serious bodily injury. ***Pew***, 929 A.2d at 1219. The prisoner in ***Pew*** presented one hundred numbered complaints to the trial court claiming, in general, poor prison conditions—none of which the Commonwealth Court found resulted in a credible allegation of imminent danger of serious bodily injury. ***Id.*** at 1216, 1219.

Here, Brown’s petition contains over one-hundred seventy prison conditions complaints that bear remarkable similarity to the complaints contained within the prisoner’s petition in ***Pew***. ***See id.***; Petition for Writ of *Habeas Corpus* at 2-28. We agree with the trial court that Brown has “failed to substantiate his averments by attaching credible medical documentation or any other form of extrinsic evidence to the petition.” T.C.O. at 3 (capitalization modified). Consequently, we agree with the trial court’s finding that Brown failed to make a credible allegation that he is in imminent danger of serious bodily injury.

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<sup>2</sup> We are not bound by the decisions of the Commonwealth Court; however, “such decisions provide persuasive authority, and we may turn to our colleagues on the Commonwealth Court for guidance when it is appropriate.” ***Haan v. Wells***, 103 A.3d 60, 67 n.2 (Pa. Super. 2014).

Brown next challenges the trial court's order denying his petition for IFP status in order to pursue a writ of *habeas corpus*. Brief for Brown at 7. Specifically, Brown claims that trial court erred in determining that his petition is not a criminal action. ***Id.*** Brown claims that his petition for *habeas corpus* is a criminal action and that "there [are] not filing fees for criminal *habeas corpus* in Huntingdon County, Pennsylvania." ***Id.*** at 2. However, "*habeas corpus* is a civil remedy, regardless of whether the prisoner has been detained under civil or criminal process." ***Commonwealth v. Wolfe***, 605 A.2d 1271, 1273 (Pa. Super. 1992).

Notwithstanding Brown's mischaracterization of his petition as a request for writ of *habeas corpus*, we, like the trial court, reviewed Brown's petition as a prison conditions litigation claim pursuant to the PLRA. Had the trial court applied the "three strikes rule" to Brown's petition, it would have been required to afford Brown the opportunity to pay the filing fees and costs prior to dismissing his petition. ***See Brown v. Pa. Dept. of Corr.***, 58 A.3d 118, 125 (Pa. Cmwlth. 2012).


Although the trial court highlighted Brown's status as an abusive litigator, Brown's petition was dismissed based upon its frivolity pursuant to Pa.R.C.P. 240(j)(1). Pa.R.C.P. 240(j)(1) permits a trial court to dismiss a proceeding prior to acting upon an IFP petition if the proceeding is frivolous. Our review of a decision dismissing an IFP petition is limited to a determination of whether the plaintiff's constitutional rights have been violated and whether the trial court abused its discretion or committed an

error of law. **Ocasio v. Prison Health Servs.**, 979 A.2d 352, 354 (Pa. Super. 2009). In this context, frivolous has been defined as lacking “any arguable basis either in law or in fact.” **Lichtman v. Glazer**, 111 A.3d 1225, 1227 n.5 (Pa. Cmwlth. 2015). As the trial court noted, because Brown has not adequately alleged “imminent danger of serious bodily injury”, he has failed to state a claim with an arguable basis in fact or law. Therefore, the trial court did not abuse its discretion in finding Brown’s claim to be frivolous and dismissing it pursuant to Rule 240(j)(1).

Accordingly, for the aforementioned reasons, we find that Brown’s constitutional rights were not violated, and the trial court did not abuse its discretion or commit an error of law in denying Brown’s petition for IFP status.

Order affirmed.

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: 7/31/2015