

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

KURTIS BRAXTON,	:	IN THE SUPERIOR COURT OF
Appellant	:	PENNSYLVANIA
	:	
v.	:	
	:	
JAMES L. GRACE, FORMER SCI	:	
HUNTINGDON SUPERINTENDENT	:	
Appellee	:	No. 191 MDA 2007

Appeal from the Order in the  
Court of Common Pleas of Huntingdon County,  
Civil Division, No. 07-37

BEFORE: ORIE MELVIN, BOWES and TAMILIA, JJ.

MEMORANDUM: FILED: July 17, 2007

Kurtis Braxton appeals, *pro se*, from the January 16, 2007, Order denying his petition for writ of *habeas corpus* and his subsequent request to proceed *in forma pauperis*, on the grounds the action was frivolous. After careful review, we find appellant's allegations do not provide a cognizable basis for relief, and we affirm the trial court's Order denying his request to proceed *in forma pauperis*.

Appellant is currently incarcerated at the State Correctional Institution (SCI) at Huntingdon following transfer from SCI-Frackville. He is held in administrative custody in SCI-Huntington which, he alleges, "constitutes cruel and unusual punishment by placing [him] in unsafe conditions." Appellant's brief at 5. In response to his transfer, appellant filed a petition for writ of *habeas corpus* and a request to proceed *in forma pauperis* on

January 9, 2007. Record, Nos. 1, 2. The court summarized the facts pleaded by appellant as follows:

Petitioner states that on December 26, 2001, he was transferred from SCIH to a similar facility at Dallas, Pennsylvania. The transfer, he pleads, was the result of an assault by him on another inmate. Thereafter, on February 15, 2005, Petitioner relates he was transferred to the State Correctional Institution at Forest (SCIF), Marienville, Pennsylvania. At this facility, he states, he received a misconduct on September 1, 2005, for assaulting another inmate who, he pleads, "had just transferred there from SCI Huntingdon." Next, [appellant] sets forth that he was transferred back to SCIH on February 14, 2006, and it is this move that precipitated this action. Petitioner requests that this Court "transfer Petitioner from SCIH for safety reasons."

Trial Court Memorandum, Kurtz, J., 2/13/07, at 1-2 (citations omitted); Record, No. 7. The trial court, upon review, dismissed appellant's petition without a hearing, concluding his request was frivolous and failed to state a cognizable basis for relief. Record, No. 3; **see also** Trial Court Memorandum at 1-3. This timely appeal followed. Record, No. 4.

On appeal, appellant raises a litany of issues challenging both the denial of his petition to proceed *in forma pauperis* and the trial court's conclusion that his petition did not state a cognizable basis for *habeas corpus* relief. Appellant's brief at 2. He contends prison officials were deliberately indifferent to the "hostile" and "unsafe" conditions imposed by his continued confinement in administrative custody at SCI-Huntingdon, and thus violated his constitutional rights. **Id.** at 5-8.

Our standard of review of a trial court's order denying a petition for writ of *habeas corpus* is limited to an abuse of discretion. ***Commonwealth, Dep't of Corrections v. Reese***, 774 A.2d 1255 (Pa.Super. 2001). Similarly, review of a court's denial of an *in forma pauperis* application is limited to determining whether constitutional rights were violated, or whether the trial court abused its discretion or committed an error of law. ***Amrhein v. Amrhein***, 903 A.2d 17 (Pa.Super. 2006). "An abuse of discretion is more than just an error in judgment and, on appeal, the trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will." ***Commonwealth v. Cunningham***, 805 A.2d 566, 575 (Pa.Super. 2002) (citation omitted). Thus, we may reverse the court's Order only where the court has misapplied the law or exercised its discretion in a manner lacking reason.

We have reviewed the record in its entirety and have considered the merit of appellant's argument. Following our careful review, we agree with the trial court that appellant's petition is frivolous under Pa.R.C.P. 240(j), which permits the court to dismiss an action brought by a party seeking *in forma pauperis* status if it is satisfied that the action is frivolous. The comment to rule 240(j) provides: "A frivolous action or proceeding has been defined as one that lacks an arguable basis either in law or in fact."

Pa.R.C.P. 240(j) *Note, citing Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1990).

Here, appellant's allegations provide no basis upon which the trial court might issue a writ of *habeas corpus*. As the court noted,

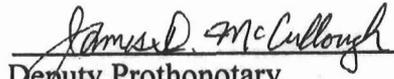
The conclusion that this action lacked an arguable basis in law or in fact was reached after consideration of the decision of the Superior Court of Pennsylvania in Commonwealth ex rel. Fortune v. Dragovich, 792 A.2d 1257 (Pa.Super. 2002). In that case, Mr. Fortune sought habeas relief in the Court of Common Pleas of Cumberland County after being transferred from SCIH to the State Correctional Institution at Camp Hill where he was placed in a "Special Management Unit" (SMU). He complained that the transfer was a retaliatory act and that his confinement in the special unit imposed more stringent conditions. Our colleague, President Judge Edgar B. Bagley, denied Fortune leave to proceed *in forma pauperis*. Superior Court agreed ruling that "Fortune's allegation concerning his transfer between prisons and housing in the SMU...are insufficient ground for issue of a writ of habeas corpus." That ruling we believe is dispositive of the claim of Mr. Braxton in this case.

Trial Court Memorandum at 2-3 (citations omitted; internal quotations in original). Furthermore, our examination of the allegations raised by appellant fails to establish any violation of his constitutional rights, and the length of appellant's placement in administrative custody is clearly not unusual given the circumstances of this case. Accordingly, the denial of appellant's petition for a writ of *habeas corpus* and subsequent request to proceed *in forma pauperis* was proper.

Order affirmed.

J. S31045/07

Judgment Entered:

  
Deputy Prothonotary

July 17, 2007

Date: \_\_\_\_\_