

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

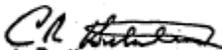
PURCELL BRONSON, :  
Petitioner :  
 :  
v. : NO. 253 M.D. 1997  
 :  
MARTIN F. HORN, COMMISIONER :  
AND AGENTS :  
Respondents :

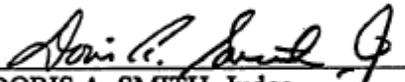
ORDER

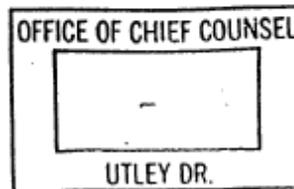
AND NOW, this 2nd day of February, 1998,  
Respondents' preliminary objection in the nature of a demurrer is sustained, and  
Petitioner's petition for review is hereby dismissed.

CERTIFIED FROM THE RECORD  
AND ORDER EXIT

FEB 2 - 1998

  
Deputy Prothonotary - Chief Clerk

  
DORIS A. SMITH, Judge



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PURCELL BRONSON, :  
Petitioner :  
 :  
v. : NO. 253 M.D. 1997  
 : SUBMITTED: October 24, 1997  
MARTIN F. HORN, COMMISSIONER :  
AND AGENTS :  
Respondents :

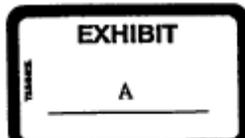
BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge  
HONORABLE DORIS A. SMITH, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE SMITH

FILED: February 2, 1998

Purcell Bronson is an inmate presently in the custody of the Pennsylvania Department of Corrections (DOC). Bronson was housed in a Restrictive Housing Unit (RHU) at the State Correctional Institution (SCI) - Huntingdon when he filed the instant petition for review in this Court's original jurisdiction against Martin F. Horn, Commissioner, and agents of DOC (Respondents). The petition asserts that Respondents have a policy of refusing Bronson access to a typewriter at SCI - Huntingdon. The policy, Bronson continues, is arbitrary and discriminatory, it deprives him of access to the courts, and it "serves no important penological interest." While Bronson's petition seeks



the relief of a declaratory judgment, the relief requested is actually consistent with that of an action in mandamus, and it will be treated as such.<sup>1</sup>

This case is the product of a civil action filed by Bronson in the Court of Common Pleas of Philadelphia County (Bronson v. Bronson, No. 1180 March Term 1993) while he was housed in an RHU at SCI - Pittsburgh. The basis of Bronson's civil action is unexplained; however, it was dismissed by the trial court on September 14, 1994 and judgment of non pros entered.<sup>2</sup> Thereafter, Bronson filed a handwritten motion to remove the judgment of non pros, with a memorandum of law and a proposed order. Bronson's motion was returned as, apparently, the judge assigned to the case indicated that all pleadings received by him must be typewritten; Bronson conformed and in October 1994 submitted his typed motion directly to the judge. On June 5, 1995, Bronson's motion to remove the judgment of non pros was returned for his failure to submit it to the

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<sup>1</sup>Mandamus is an extraordinary writ of common law, designed to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the petitioner, a corresponding legal duty in the respondent, and want of any other adequate or appropriate remedy at law. Green v. Tioga County Board of Commissioners, 661 A.2d 932 (Pa. Cmwlth. 1995). Also, an action in mandamus is not the proper method by which to establish legal rights; it is only appropriately used to enforce those rights that have already been established. Wassell v. Commonwealth, 658 A.2d 466 (Pa. Cmwlth. 1995).

<sup>2</sup>His case was dismissed for failure to appear at the call of the list. Bronson claims he filed a petition for a writ of *habeas corpus ad testificandum* that was ignored by the trial court. He also apparently alleges that the trial court had an affirmative duty to issue such a writ *sua sponte* as per Pa. R.C.P. 234.2(d); the rule is clear that issuance is based only upon motion. Nonetheless, Bronson could have, in the alternative, obtained representation or requested a continuance.

prothonotary. Bronson then wanted to retype his motion but was unable to do so as he had been transferred to SCI – Huntingdon on July 19, 1995.<sup>3</sup> Bronson claims that he wrote the judge a letter to explain the situation and to request permission to file a handwritten motion, or, in the alternative, an order requiring prison officials to provide him access to a typewriter. The judge refused Bronson's request, resulting in his petition to this Court.

Respondents have filed a preliminary objection to the petition in the nature of a demurrer and a brief in support thereof. Bronson has filed a typewritten brief in opposition.<sup>4</sup> When ruling upon a preliminary objection in the nature of a demurrer, the Court must accept as true all well-pleaded allegations of material fact as well as all reasonable inferences deducible therefrom. Rodgers v. Pennsylvania Department of Corrections, 659 A. 2d 63 (Pa. Cmwlth. 1995). A demurrer, resulting in the dismissal of a suit, should be sustained only in cases which are free and clear from doubt, and only where it appears, with certainty, that the law permits no recovery under the allegations pleaded. Id.

In Martin v. Jeffes, 501 A.2d 308 (Pa. Cmwlth. 1985), the Court stated the rule that there is no constitutional right to possess a typewriter in prison

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<sup>3</sup>Clearly, Bronson had access to a typewriter while at SCI – Pittsburgh; his motion to remove judgment of non pros was typed. It is not clear why he wanted to retype that motion or why he failed to do so before he was transferred. Barring any error within that motion (no such allegation has been made), it appears that he could have simply submitted it to the prothonotary pursuant to the judge's suggestion rather than retype it.

<sup>4</sup>His brief intertwines access to a typewriter with the possession of a personal typewriter – two distinct issues.

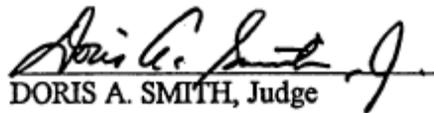
as the considerations underlying the penal system necessarily bring about the withdrawal or limitation of many privileges and rights. The Martin holding could, therefore, lead to the inference that there is no right to the access of a typewriter. On the other hand, it is well recognized that inmates have a constitutional right of access to the courts. Bounds v. Smith, 430 U.S. 817 (1977). That access includes assistance "in the preparation and filing of meaningful legal papers ...."<sup>5</sup> Id. at 828. Thus it appears that the questions presented by Bronson's petition include (1) whether assistance "in the preparation ... of ... legal papers" implicates the right of access to a typewriter, as possession of a typewriter does not equate with access thereto, and (2) whether Bronson's right of access to the courts has been abrogated where he is denied access to a typewriter.

Bronson filed his handwritten petition for review with this Court in March 1997 while incarcerated at SCI - Huntingdon. Thereafter, at a date uncertain, Bronson was transferred back to SCI - Pittsburgh, as his October 1997 typewritten brief in opposition to Respondents' preliminary objection indicates. As such, Bronson now has access to a typewriter so that this Court need not consider that issue. More importantly, however, is that during the relevant period of time during the pendency of his civil action before the trial court, Bronson had access to

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<sup>5</sup>The provisions of Bounds have recently been clarified in the decision of Lewis v. Casey, \_\_\_ U.S. \_\_\_, 116 S.Ct. 2174, 135 L.Ed. 2d. 606 (1996). The Supreme Court determined that Bounds was not intended to transform inmates into litigating machines, rather it was designed to provide them with the tools necessary to attack their sentences or the conditions of their confinement. "Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." Id. at 620.

a typewriter to prepare his pleadings. Bronson's alleged denial of access to that court was due, ultimately, to the judgment of non pros entered for his failure to appear at the call of the list. Consequently, he has not demonstrated a denial of access to the courts. Because Bronson has not established a claim in which he has a clear legal right and where Respondents have a corresponding legal duty, Respondents' demurrer is sustained and Bronson's petition for review is dismissed.

  
DORIS A. SMITH, Judge