

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Smith; Gregory Thomas;	:	
Hugh Williams; Gary Kretchmar,	:	
Petitioners	:	
v.	:	
Commonwealth of Pennsylvania;	:	No. 260 M.D. 2008
Edward G. Rendell, in his official	:	Submitted: October 31, 2008
capacity as Governor of the	:	
Commonwealth of Pennsylvania;	:	
Tom Corbett, Attorney General	:	
of the Commonwealth of Pennsylvania;	:	
Pennsylvania Board of Pardons,	:	
Respondents	:	

OPINION NOT REPORTED

MEMORANDUM OPINION  
PER CURIAM

FILED: January 13, 2009

Currently before our court are the preliminary objections filed by the Commonwealth of Pennsylvania (Commonwealth), Edward G. Rendell, in his official capacity as Governor of the Commonwealth (Rendell), Tom Corbett, Attorney General of the Commonwealth (Corbett), and the Pennsylvania Board of Pardons (Board) (collectively, Respondents) in response to the petition for review (Petition) filed by William Smith (Smith), Gregory Thomas (Thomas), Hugh Williams (Williams), and Gary Kretchmar (Kretchmar) (Collectively, Petitioners). Also before our court are the preliminary objections of Petitioners to Respondents' preliminary objections. We dismiss, as Petitioners do not have standing to bring this suit.

This action was commenced by Petitioners, four prisoners incarcerated at the State Correctional Institution at Graterford (SCI-Graterford), in

which they seek to challenge the 1997 amendment to Article IV, §9(a) of the Pennsylvania Constitution which, inter alia, altered voting procedures used by the Board with regard to applications for commutation by prisoners who are sentenced to a term of life imprisonment or to death.<sup>1</sup> The relief sought is declaratory in nature.

Petitioners are each serving a term of life imprisonment. Smith, Thomas and Williams have previously submitted applications for commutation with the Board. Kretchmar merely has an “expectation” of filing such application for commutation with the Board. Petition at 2. On September 24, 1992, the Board voted 5-0 to recommend that Smith be granted commutation. On September 29, 1994, the Board voted 3-2 to recommend that Thomas be granted commutation.<sup>2</sup> On July 15, 1993, the Board voted to deny Williams a public hearing on his application for commutation.<sup>3</sup>

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<sup>1</sup> Since Petitioners have filed their petition, more than 400 prisoners who are serving life sentences at various institutions have filed individual motions to intervene. On June 11, 2008, Respondents moved to defer any responses to those motions pending the court’s disposition of their preliminary objections. The court granted that motion on June 12, 2008 and subsequently denied a motion for reconsideration by the prisoners on July 2, 2008.

<sup>2</sup> The Board is authorized by the Pennsylvania Constitution to make recommendations to the Governor regarding commutations. However, only the Governor is empowered to commute sentences. The Board cannot grant commutations. The Petitioners’ petition does not mention the Governor’s actions on the Board’s recommendations but, because Smith and Thomas have received favorable votes of the Board and are described as still currently serving life sentences, it is assumed that the Governor did not accept the Board’s recommendations.

<sup>3</sup> Under the Board’s regulations, a prisoner who is serving a noncapital sentence who submits an application for commutation is subject to a procedure known as “merit review,” by which the Board determines if a public hearing on the merits of the application for commutation will be conducted. In the case of a prisoner serving a life sentence, a hearing will be held only if a majority of the Board members vote to grant a public hearing on the application. 37 Pa. Code § 81.231.

Prior to 1997, Article IV, §9(a) of the Pennsylvania Constitution provided in pertinent part as follows:

In all criminal cases except impeachment, the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing **of a majority** of the Board of Pardons, after full hearing in open session, upon due public notice.... (Emphasis added).

On November 4, 1997, upon approval by the electorate, Article IV, §9(a) of the Pennsylvania Constitution was changed to provide in pertinent part as follows:

In all criminal cases except impeachment the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, **and in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons**, after full hearing in open session, upon due public notice.... (Emphasis added).

This amendment of the Pennsylvania Constitution was part of the work of a special session of the Pennsylvania General Assembly that was convened pursuant to a proclamation issued by former Governor Thomas J. Ridge, dated January 18, 1995. The proclamation specifically identified “[r]eform of the pardons and commutations system and laws to ensure public safety” as one of the purposes of the special legislative session. Petition at 3. The amendment of Article IV, §9(a) was effected by Joint Resolution 1997-2. At the time the proposed amendment was being placed before the Pennsylvania voters, the

accompanying ‘plain English’ statement prepared by Corbett explained that: “The effect of the ballot question would be to make it more difficult for an individual sentenced to death or life imprisonment to obtain a pardon or commutation of sentence....”<sup>4</sup> Id., at 4.

On May 3, 2008, Petitioners filed their Petition with this court. On May 7, 2008, our court determined that this matter was one directed to our original jurisdiction, 42 Pa. C.S. §761. Petitioners alleged that Joint Resolution 1997-2 and/or the amendment to Article IV, §9(a) of the Pennsylvania Constitution as approved by the electorate on November 4, 1997, is unconstitutional under Article I, §10, which provides that no state shall pass a Bill of Attainder. Specifically, Petitioners state that Joint Resolution 1997-2 violates the prohibition against the infliction of additional punishment upon death or life sentenced individuals who were convicted and sentenced prior to the electorate voting upon and approving the amendment to Article IV, §9(a) of the Pennsylvania Constitution on November 4, 1997.

Additionally, Petitioners contend that Joint Resolution 1997-2 and/or the amendment to Article IV, §9(a) of the Pennsylvania Constitution as approved by the electorate on November 4, 1997, is unconstitutional under the Equal Protection Clause of the 14<sup>th</sup> Amendment, in that it does not bare a rational relationship to a legitimate governmental purpose. Specifically, Petitioners state that the plain language of the proposed amendment to Article IV, §9(a), as

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<sup>4</sup> Section 201.1 of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, as amended, added by Section 1 of the Act of February 19, 1986, P.L. 29, 25 P.S. §2621.1, requires that “[w]henver a proposed constitutional amendment or other State-wide ballot question shall be submitted to the electors of the Commonwealth in referendum, the Attorney General shall prepare a statement in plain English which indicates the purpose, limitations and effects of the ballot question on the people of the Commonwealth.” 25 P.S. §2621.1.

contained in Joint Resolution 1997-2, violated the 14<sup>th</sup> Amendment's guarantee of equal protection and establishes more stringent criteria for a specified class of citizens to seek aid from the government.

Third, Petitioners contend that Joint Resolution 1997-2 and/or the amendment to Article IV, §9(a) of the Pennsylvania Constitution as approved by the electorate on November 4, 1997, is unconstitutional under Article I, §§ 1 and 26, regarding equal protection, as it has affected a fundamental federal constitutional right against the state passing any bill of attainder that inflicts additional punishment upon death or life sentenced individuals who were convicted and sentenced prior to November 4, 1997.

Finally, Petitioners contend that Joint Resolution 1997-2 and/or the amendment to Article IV, §9(a) of the Pennsylvania Constitution as approved by the electorate on November 4, 1997, is unconstitutional under Article I, §§ 1, 9, and 11 regarding due process, and under Article I, §20 regarding the right to petition.

On June 20, 2008, Respondents filed preliminary objections contending that this court lacks jurisdiction to entertain this matter as it presents no actual case or controversy and none of the Petitioners has standing to bring this action. Further, Respondents demur to the Petition on the grounds that it fails to state a claim under the United States Constitution for which redress may be granted, fails to state a claim under the Pennsylvania Constitution and fails to present a claim which involves an actual controversy, that the action is barred by either the applicable statute of limitations or laches, that Petitioners fail to present a claim with respect to which any of the Petitioners has standing to pursue and

neither the Commonwealth nor the Board is a proper party to this litigation. Respondents request that our court dismiss the Petition with prejudice.

On October 7, 2008, Petitioners filed preliminary objections to Respondents' preliminary objections. Petitioners ask that we strike demurrer number three for failure to raise laches and statute of limitations as new matter under Pa. R.C.P. No. 1028(a)(2) and Pa. R.C.P. No. 1030, and to strike demurrer numbers three, four, five and six for failure to brief the objections under Pa. R.C.P. No. 1028(a)(2).

In ruling on preliminary objections, this Court must accept as true all well-pleaded material allegations in the petition for review, as well as all inferences which may reasonably be deduced there from. Meier v. Maleski, 648 A.2d 595 (Pa. Cmwlth. 1994). This court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. Id. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery and any doubt should be resolved by a refusal to sustain them. Id.

Initially, we will address Respondents' contention that the Petitioners lack standing. Our Supreme Court has stated in pertinent part as follows:

[A]s a general policy... "[a] party seeking judicial resolution of a controversy in this Commonwealth must, as a prerequisite, establish that he has standing to maintain the action...." Our Commonwealth's standing doctrine is not a senseless restriction on the utilization of judicial resources; rather, it is a prudential, judicially-created tool meant to winnow out those matters in which the litigants have no direct interest in pursuing the matter. Such a requirement is critical because only when "parties have sufficient interest in a matter [is it] ensured that there is a legitimate controversy before the court." (Citations and footnote omitted).

In re: Hickson, 573 Pa. 127, 135-136, 821 A.2d 1238, 1243 (2003).

In establishing standing, a party must show that he “has somehow been ‘aggrieved’ by the matter he seeks to challenge.” Id. at 136, 821 A.2d at 1243 (citing Independent State Store Union v. Pennsylvania Liquor Control Board, 495 Pa. 145, 432 A.2d 1375 (1981)). The Supreme Court further stated that:

A litigant can establish that he has been “aggrieved” if he can show that he has a substantial, direct and immediate interest in the outcome of the litigation in order to be deemed to have standing. A ‘substantial’ interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A ‘direct’ interest requires a showing that the matter complained of caused harm to the party’s interest. An ‘immediate’ interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it.” Yet, if that person “is not adversely affected in any way by the matter he seeks to challenge, [he] is not ‘aggrieved’ thereby and has no standing to obtain a judicial resolution of his challenge. In particular, it is not sufficient for the person claiming to be ‘aggrieved’ to assert the common interest of all citizens in procuring obedience to the law.” (Citations omitted).

Hickson, 573 Pa. at 136, 821 A.2d at 1243.

In the present controversy, Petitioners do not have any actual, substantial, direct or immediate interest in the constitutionally mandated change in the Board’s voting procedures. Petitioners Smith, Williams and Thomas had submitted applications for commutation which the Board voted on in 1992, 1993, and 1994, respectively. Kretchmar merely states that he has an “expectation” of filing an application for commutation with the Board. The Board’s voting procedures were not changed until 1997. The petition for review only alleges

events that occurred prior to 1997. The 1997 amendment did not, therefore, affect Petitioners' requests for commutation or their right to file for commutation. Thus, since Petitioners have not been aggrieved, they do not have standing to bring this suit.

Further, in order for our court to entertain this matter under the Declaratory Judgments Act, 42 Pa.C.S. §§7531-7541, there must be an actual controversy that indicates imminent, inevitable litigation, and a direct, substantial and present interest. Stilp v. Commonwealth, 910 A.2d 775, 782 (Pa. Cmwlth. 2006)(citations omitted). Although the Petition asserts that the change in the Board's voting procedures is disadvantageous to those serving a life sentence or those who are sentenced to death who are seeking commutation, it does not reflect that any of the four Petitioners has been affected by the amendment. Smith, Williams and Thomas received their commutation decisions in 1992, 1993 and 1994, respectively, and Kretchmar has never even filed an application, let alone been denied the benefit that a majority vote may have obtained for him prior to 1997. There is no allegation that any Petitioner submitted an application for commutation that would have been subject to the changes initiated after the 1997 amendment or that Petitioners would have been entitled to a recommendation by the Board to the Governor but for the unanimity requirement. There is, therefore, no actual case or controversy before this court. Thus, this Court lacks jurisdiction to entertain this matter.<sup>5</sup>

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<sup>5</sup> We note that due to the Petitioners lack of standing to bring this matter, we need not address the remaining preliminary objections of Respondents, nor do we address Petitioners' preliminary objections to Respondents' preliminary objections, as they are moot.

Accordingly, we sustain the preliminary objections of Respondents and dismiss the preliminary objections of Petitioners to Respondents' preliminary objections as moot.<sup>6</sup>

The Petition is dismissed with prejudice.

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<sup>6</sup> We further note that the mere filing of an application for commutation after 1997 would not suffice to demonstrate the existence of an actual case or controversy, as not every application by a prisoner serving a life sentence or who has been sentenced to death, receives a hearing on the merits which would culminate in a majority vote by the Board and is then rejected by the Governor.

