

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DAVID G. LUSICK,

Petitioner

v.

KEEPER OF THE STATE
CORRECTIONAL INSTITUTE
SMITHFIELD et al.,

Respondents

NO. 409 M.D. 2004

PER CURIAM

ORDER

Now, October 13, 2004, upon consideration of respondents' preliminary objection in the nature of a demurrer and petitioner's response, the demurrer is sustained, and the petition for review is dismissed. Respondents' remaining preliminary objections are dismissed as moot.

In his petition for review petitioner alleges that he injured his knee in 2001, received treatment including surgery in 2002, and was transferred to SCI-Laurel Highlands for aftercare and rehabilitation. In May 2003, petitioner was transferred back to SCI-Smithfield. Petitioner alleges that he stills suffer with stiffness and a limp, that he cannot receive proper care at SCI-Smithfield, and requests that he be transferred back to SCI-Laurel Highlands. Petitioner's Eighth Amendment claim fails because he does not establish a deliberate indifference to a serious medical need or the unnecessary and wanton infliction of pain. Kretchmar v. Department of Corrections, 831 A.2d 793 (Pa. Cmwlth. 2003). Petitioner has failed to establish that respondents denied him humane conditions and knowingly disregarded an excessive risk to his health and safety. Id.

