

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher E. Martin,
Appellant

v.

Mardi I. Vincent, Superintendent
Robin Rutter, Deputy Superintendent
of Centralized Services, Annett
Kowalewski, Health Care
Administrator, Robert Eller, D.O.C.
Bureau Health Care Administrator,
Attorney General, Secretary
Jeffrey A. Beard

No. 925 C.D. 2011
SUBMITT

Jaime

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER

FILED: October 28, 2011

Christopher E. Martin appeals, *pro se*, from the order of the Court of Common Pleas of Somerset County, which dismissed his action as frivolous. We affirm.

Martin, an inmate in a State Correctional Institution, filed this suit after, in 2007, \$10 was allegedly deducted from his prison account as a co-pay for medical services he received while in prison. He asserts that because he was

incarcerated prior to the enactment of the law authorizing the deduction,¹ the deduction was a violation of due process and an *ex post facto* punishment.

Before common pleas, Martin moved to proceed *in forma pauperis*. Common pleas, however, dismissed the case, citing Rule of Civil Procedure 240(j), which allows dismissal of frivolous litigation before *in forma pauperis* status is granted. The official note following the rule states that “a frivolous action is one that lacks an arguable basis in either fact or law.” Rule of Civil Procedure 240(j), *citing Neitzke v. Williams*, 490 U.S. 319 (1989). Martin filed an appeal with the Superior Court, which transferred the case to this court.

Common pleas did not err in dismissing this case as frivolous. Because it is not a criminal punishment, the statute at issue cannot be an *ex post facto* sentence. In addition, the law is not being applied retroactively, rather, the co-pay is only applied to medical care provided after the enactment of the statute. This court previously addressed this question in *Weaver v. Department of Corrections*, 720 A.2d 178 (Pa. Cmwlth. 1998), and came to the same conclusion.

For all the foregoing reasons, we affirm.



BONNIE BRIGANCE LEADBETTER,
President Judge

¹ The Prison Medical Services Act, Act of May 16, 1996, P.L. 220, *repealed* by The Correction Institution Medical Services Act, 61 Pa. C.S. §§ 3301-3307.

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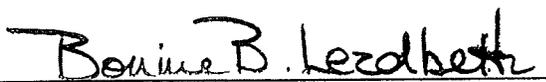
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ORDER

AND NOW, this 28th day of October, 2011, the order of the Court of
Common Pleas of Somerset County in the above-captioned matter is hereby
AFFIRMED.



BONNIE BRIGANCE LEADBETTER,
President Judge

Certified from the Record

OCT 28 2011

and Order Exit