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**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH EX REL. CAINE :	IN THE SUPERIOR COURT OF
PELZER,	PENNSYLVANIA
	:
Appellee :	
	:
v. :	
	:
GERALD ROZUM, SUPERINTENDENT :	
SCI SOMERSET,	NO. 261 WDA 2010
	:
Appellant	

Appeal from the Order February 2, 2010  
In the Court of Common Pleas of Somerset County Civil Division  
At No(s): 919 CIVIL 2009.

BEFORE: MUSMANNO, OTT, AND CLELAND\*, J.J.

MEMORANDUM:

FILED: September 17, 2010

Appellant, Caine Pelzer (Pelzer), appeals the order of the Court of Common Pleas of Somerset County denying his petition for writ of *habeas corpus*. Pelzer argues his rights to procedural due process were violated at the review before the Program Review Committee (PRC) relating to his placement on the Restricted Release List (RRL). Because Pelzer's allegations do not provide sufficient basis to grant a writ for *habeas corpus*, we affirm.

In appeals from a denial of a petition for a writ of *habeas corpus*, we are guided by the following:

Our standard of review of a trial court's order denying a petition for writ of *habeas corpus* is limited to abuse of discretion. **See Commonwealth, Dep't of Corrections v. Reese**, 774 A.2d 1255, 1261 (Pa. Super. 2001). Thus, we may reverse the court's order where the court has

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\* Retired Senior Judge assigned to the Superior Court.

misapplied the law or exercised its discretion in a manner lacking reason. **See *Lachat v. Hinchcliffe***, 769 A.2d 481, 487 (Pa. Super. 2001) (defining abuse of discretion). As in all matters on appeal, the appellant bears the burden of persuasion to demonstrate his entitlement to the relief he requests. **See *Miller v. Miller***, 744 A.2d 778, 788 (Pa. Super. 1999).

The availability of *habeas corpus* in Pennsylvania is both prescribed and limited by statute. **See** 42 Pa.C.S. §§ 6502 (Power to issue writ); 6503 (Right to apply for writ). Subject to these provisions, the writ may issue only when no other remedy is available for the condition the petitioner alleges or available remedies are exhausted or ineffectual. **See *Reese***, 774 A.2d at 1260. Thus, "*habeas corpus* should not be entertained ... merely to correct prison conditions which can be remedied through an appeal to prison authorities or to an administrative agency." ***Commonwealth ex rel. Bryant v. Hendrick***, 444 Pa. 83, 280 A.2d 110, 113 (1971). Moreover, "it is not the function of the courts to superintend the treatment and discipline of prisoners in penal institutions." ***Id.*** Accordingly, the writ may be used only to extricate a petitioner from illegal confinement or to secure relief from conditions of confinement that constitute cruel and unusual punishment. **See *id.*; *Weaver v. Pa. Bd. of Probation and Parole***, 688 A.2d 766, 775 n. 17 (Pa. Cmwlth. 1997). "[T]he failure or refusal of prison authorities to exercise discretion in a particular way may not be reviewed in a *habeas corpus* proceeding." ***Commonwealth ex rel. Tancemore v. Myers***, 189 Pa. Super. 270, 150 A.2d 180, 182 (1959).

***Commonwealth ex rel. Fortune v. Dragovich***, 792 A.2d 1257, 1259 (Pa. Super. 2002).

Here, Pelzer is not arguing his placement on the RRL amounted to cruel and unusual punishment. Pelzer is simply arguing the PRC's review of his RRL status deprived him of his right to procedural due process because

he was "ushered" in front of the PRC and was not allowed to be heard.<sup>1</sup>

Appellant's Brief at 4. Pelzer fails to recognize that:

In **Hewitt v. Helms**, 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983), the [United States] Supreme Court considered whether prison inmates were entitled to due process before being placed in solitary confinement for administrative-rather than disciplinary-reasons. The Court expressly rejected the idea that due process required a "detailed adversary proceeding," on the ground that it would not "materially assist" the decision to be made. **Id.** at 473-74, 103 S.Ct. 864. The Court further held that in these situations, an "informal, nonadversary review" at which the prisoner has the opportunity to state his views, satisfies the requirements of due process.

**Shoats v. Horn**, 213 F.3d 140, 144 (3d Cir. 2000).

Here, Pelzer perhaps might have wanted to say more, but this is not sufficient to carry his burden for purposes of a writ of *habeas corpus*. **See Fortune, supra; see also Rivera v. Pennsylvania Dept. of Corrections**, 837 A.2d 525, 533-34 (Pa. Super. 2003).

Pelzer also argues the RRL review procedure violated his due process rights because it does not provide for an appeal from the decision to place

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<sup>1</sup> It should be noted in his administrative appeal from the PRC's decision (filed the same day of the PRC hearing), Pelzer did not argue he was not allowed to express his position or that he was not allowed to be heard. He simply argued the PRC's explanation of its decision was vague. Appellant's Exhibit B. While in subsequent filings the phrase "not allowed to be heard" becomes a steady fixture, a close review of Pelzer's contentions and writings reveals Pelzer is not alleging the prison officials did not allow him to express his view or talk; he is simply arguing the RRL review procedure is, in his opinion, inadequate as currently structured. The contention, as also other courts have found, is without merit. **See, e.g., Nifas v. Beard**, 2010 WL 1141389 (3d Cir. 2010); **Bowen v. Ryan**, 248 Fed.Appx. 302 (3d Cir. 2007).

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him on the RRL. We note this very same issue has been raised and rejected by federal courts. ***See, e.g., Nifas, supra; Bowen, supra.***

Finally, Pelzer argued at the hearing before the PRC held on March 19, 2009, he was told he would never be returned to the general population. While the allegation, if supported, would probably be sufficient for this Court to entertain the challenge, a review of the written explanation of the PRC's decision reveals quite a different story.

First, at the time of the March 19, 2009 hearing, the PRC told him that, as a result of his previous misconduct, he was subject to Disciplinary Custody (DC) until August 24, 2009. He was also told that, upon release from DC, he would be placed on Administrative Custody (AC). Finally, he was told he would be placed in the Restricted Housing Unit once released from DC but that his status would have been reviewed on June 10, 2009.

Contrary to Pelzer's allegations, therefore, there is no indication Pelzer, as a result of the PRC's decision on March 19, 2009, was placed on the RRL<sup>2</sup> and, most importantly, there is no indication he was told he would be kept on the RRL indefinitely. To the contrary, as noted above, the PRC clearly stated his status was subject to review and gave him a review date. The contention is therefore without merit.

Order affirmed.

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<sup>2</sup> Nor could Pelzer be placed on RRL at that time because only AC inmates can be placed on RRL. ***See*** definition of RRL in the Pennsylvania Department of Corrections Policy Number DC-ADM 802, Appellee's Exhibit 1.

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Judgment Entered:

Eleanor K. Valecko  
Deputy Prothonotary

DATE: September 17, 2010