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INMATES OF SCI-ALBION
and individually, NING YUAN

: IN THE COURT OF COMMON PLEAS
: OF ERIE COUNTY, PENNSYLVANIA

v.

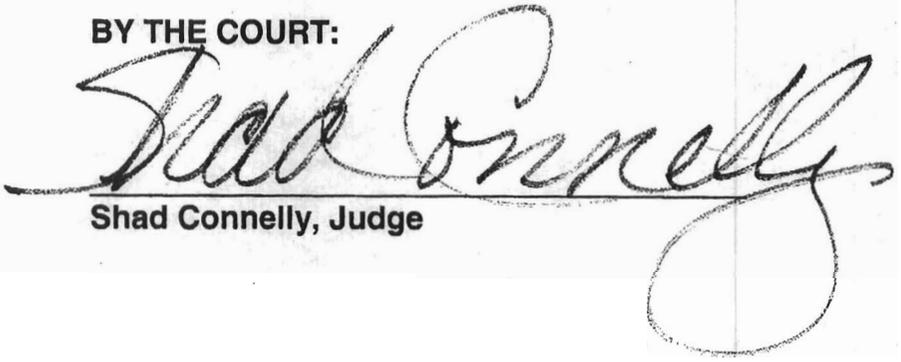
RAYMOND J. SOBINA, Warden
JOHN DOE and JANE DOE

:
:
: No. 18042 - 2008

ORDER

AND NOW, TO-WIT, this 16th day of January, 2009, upon consideration of the Preliminary Objections of the Respondent Raymond Sobina, it is hereby **ORDERED** that the Respondent's Preliminary Objections are **SUSTAINED** and the Petition for Writ of Mandamus is hereby **DISMISSED**.¹

BY THE COURT:



Shad Connelly, Judge

Ning Yuan, #HH8622
SCI Albion
10745 Route 18
Albion, PA 16475-0001
Pro se Petitioner, o/b/o Inmates and SCI Albion and individually

Raymond J. Sobina, Warden
SCI Albion
10745 Route 18
Albion, PA 16475-0001
Respondent

Maria Macus-Bryan, Esquire
Assistant Counsel
Department of Corrections
55 Utley Drive
Camp Hill, Pa 17001-0598

COMMON PLEAS COURT
ERIE, PA
2009 JAN 16 P 3:16
CLERK OF RECORDS
PROTHONOTARY

¹ Petitioner has failed to file a responding brief within thirty (30) days as required by Erie County Rule of Civil Procedure 1028(c)(2).

CLERK OF RECORDS

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CRIMINAL DIVISION
COUNTY COURTHOUSE
ERIE, PA 16501

**IN THE COURT OF COMMON PLEAS OF
ERIE COUNTY, PENNSYLVANIA**

INMATES OF SCI-ALBION and
INDIVIDUALLY, NING YUAN,
Petitioners,

No. ~~467~~ M.D. 2008¹

v.

RAYMOND J. SOBINA, WARDEN,
and JOHN and JANE DOE,
Respondents

PRELIMINARY OBJECTIONS OF RESPONDENT RAYMOND SOBINA

NOW, comes Maria Macus-Bryan, Assistant Counsel for Raymond Sobina, and files the following Preliminary Objections to the Petition for Writ of Mandamus (“Petition”) filed by Petitioner, Ning Yuan (“Yuan”):²

Background

¹ Based upon this Court’s Order of November 10, 2008, it appears that this Court has retained the docket number assigned in Commonwealth Court—467 M.D. 2008.

² Yuan originally filed the Petition in the Commonwealth Court, which subsequently ordered that the matter be transferred due to a lack of original jurisdiction because Yuan had not named a state-wide officer.

1. Petitioner Yuan is an inmate who is currently incarcerated by the Department of Corrections of the Commonwealth of Pennsylvania (“Department”) at the State Correctional Institution at Albion (“SCI-Albion”) under Inmate Number HH-8622. Petition, ¶ 2.

2. Yuan also states that the “Inmates of SCI-Albion” are Petitioners as well. *Id.*

3. Respondents are Raymond Sobina, Superintendent of SCI-Albion (“Sobina”), and John and Jane Doe, “unknown individuals at this time.” *Id.*, ¶ 3.³

4. Yuan alleges that there are two groups of inmates at SCI-Albion who are deprived of their statutory right to at least two hours of daily physical exercise in the open—“workers” and “inmates receiving medication for mental and medical health treatment.” *Id.*, ¶ 4.

5. Yuan alleges that there are three different time schedules for receiving medication and there are no set schedules for the order in which housing units are called for the medication line. *Id.*, ¶¶ 6-7.

³ No appearance has been entered for “John and Jane Doe” because the Commonwealth Attorney’s Act, 71 P.S. § 732-101 *et seq.*, precludes appearances for unnamed / unidentified alleged employees, who have not consented to legal representation. 4 Pa. Code § 39.1 *et seq.*; 42 Pa. C.S. § 8525.

6. Yuan states that the inmates who receive medication for “mental and medical health treatment” “are currently prescribed medications for their serious illness which requires them to report to all three medication lines.” *Id.*, ¶ 8.

7. Yuan states that if inmates attend exercise yard before the medication line is called, they are not permitted to go to the medication line when they return from the exercise yard. *Id.*, ¶ 10.

8. Yuan alleges that there is another group of inmates whose assigned work schedules are during yard, and if an inmate goes to yard instead of work, he receives a misconduct. *Id.*, ¶ 14.

9. Yuan alleges that the aforementioned two groups of inmates are denied the statutory right to two hours of daily physical exercise pursuant to 61 P.S. § 101 because they are prohibited from attending exercise yard due to work and medication schedules. *Id.*, ¶¶ 20, 23.

Relief Requested

10. Yuan requests that this Court enter an order “compelling the [R]espondents to install a schedule which would allow both group of [P]etitioners to report to their work assignments, to receive their medications, and to receive at least two hours of daily physical exercise outdoors.” *Id.*, ¶ 26.

Preliminary Objection – Pa. R.Civ.P. 1028(a)(1)

Improper Form of Service

11. Pursuant to this Court's Order of November 10, 2008, Sobina has been ordered to file a response to the Petition.

12. Yuan has not served Sobina in accordance with Pennsylvania Rules of Civil Procedure 400 and 422.

13. It is not a defense to a preliminary objection of improper service that Petitioner served his initiating document, originally filed in the Commonwealth Court, by certified mail, as authorized by Pa. R.A.P. 1514. *Gallman v. Martin*, 889 A.2d 649 (Pa. Cmwlth. 2005).

Preliminary Objection-Pa. R.Civ.P. 1028(a)(4), (5)

Lack of Standing to Act as Attorney

14. Yuan cannot bring an action on behalf of the "Inmates at SCI-Albion," because "it is well-settled that, with a few exceptions not applicable, non-attorneys may not represent parties before the Pennsylvania courts and most administrative agencies." *The Spirit of the Avenger Ministries v. Commonwealth of Pennsylvania*, 767 A.2d 1130 (Pa. Cmwlth. 2001) (citations omitted).

15. In reaching its decision in *The Spirit of the Avenger Ministries*, the Commonwealth Court, quoting from a previous case, observed:

In *Winters v. Sheporwich*, 83 Pa. D. & C. 484, 486 (C.P. Luzerne 1930), the Luzerne County Common Pleas Court held that proceedings commenced by persons unauthorized to practice law are a nullity . . . The Erie

County Common Pleas Court reached the 'same conclusion in *Goldstein v. Marriott*, 14 Pa. D. & C. 635 (C.P. Erie 1930). In *Thomas v. Estelle*, 603 F.2d 488, 489 (5th Cir. 1979), the Fifth Circuit Court of Appeals held that it was without jurisdiction to consider a civil rights complaint filed on behalf of a prisoner by another prisoner who was not licensed to practice law. . . . By that same reasoning, we are convinced that we are without jurisdiction to consider arguments and motions made on behalf of a prisoner in a civil action that are filed by another prisoner who is not licensed to practice law

The Spirit of the Avenger Ministries, 767 A.2d at 1131 (quoting *McCain v. Curione*, 106 Pa. Commw. 552, 527 A.2d 591 (1987)).

16. Although there is no prohibition with Yuan filing this Petition on his own behalf, he lacks standing to act as a class action representative on behalf of other inmates because he is not licensed to practice law in this Commonwealth.

Preliminary Objection-Pa. R.Civ.P. 1028(a)(4) – Demurrer
Mandamus

17. Preliminary objections in the nature of a demurrer admit all well-pleaded material facts and any inferences reasonably deduced therefrom, but not legal conclusions. *Danysh v. Department of Corrections*, 845 A.2d 260, 262 (Pa. Cmwlth. 2004).

18. In determining whether a preliminary objection based on a demurrer should be sustained, a court “need not accept as true conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of

opinion.”” *Silo v. Ridge*, 728 A.2d 394, 398 (Pa. Cmwlth. 1999) (citing *Giffin v. Chronister*, 151 Pa. Commw. 286, 289, 616 A.2d 1070, 1072 (1992)).

19. When ruling on a demurrer, a court may sustain the objections and dismiss the case only when such relief is clear and no doubt exists that the law will not permit a recovery. *Stone and Edwards Insurance Agency, Inc. v. Department of Insurance*, 151 Pa. Commw. 266, 271, 616 A.2d 1060, 1063 (Pa. Cmwlth. 1992).

20. Mandamus is proper to “compel the performance of a ministerial duty and will not be granted in doubtful cases.” *Doxsey v. Pa. Bureau of Corrections*, 674 A.2d 1173, 1174 (Pa. Cmwlth. 1996).

21. Mandamus lies only where the petitioner “demonstrates a clear legal right to relief, a correspondingly clear duty on the part of the party against whom mandamus is sought, and the want of any other adequate remedy.” *Id.* See also *Equitable Gas Company v. City of Pittsburgh*, 507 Pa. 53, 58, 488 A.2d 270, 273 (1985) (also finding that the petitioner must show “an immediate, specific, well defined and complete legal right to the thing demanded”) (citing *Purcell v. City of Altoona*, 364 Pa. 396, 72 A.2d 92 (1950)).

22. Mandamus is not proper to establish legal rights; it is only appropriately used to enforce those rights that have already been established. See

Waters v. Department of Corrections, 97 Pa. Commw. 283, 286, 509 A.2d 430, 432 (1986).

23. Yuan has not established a clear legal right to the relief requested.

24. Yuan alleges that inmates are given a choice to attend exercise yard or medication line/work assignments, which is contrary to the Prison Exercise Act, 61 P.S. § 101, which states: “Every warden, . . . shall provide that [any person confined] shall have at least two hours daily, physical exercise in the open, weather permitting.”

25. Yuan attaches to his Petition an “Inmate’s Request to Staff Member” or a Form DC-135A, in which he states: “It has been brought to my attention . . . that if I attend yard and come in at ‘half-time,’ I will not be permitted to go to medication line.” See Exhibit “B” to Petition.

26. In the body of his Petition, Yuan makes no allegations that he personally has been presented with this choice or, for that matter, that he has exercised the choice at any particular time. The aforementioned statement in his DC-135A appears to be a hypothetical, thus, rendering his request for relief merely an advisory opinion, “a practice [the Pennsylvania Supreme Court has] consistently eschewed.” *Powell v. Housing Authority of the City of Pittsburgh*, 571 Pa. 552, 566, 812 A.2d 1201, 1210 (2002).

27. Yuan does not make any factual allegations, either in the body of the Petition or the attachments thereto, that he is presented with a choice between exercise yard and work.

28. Yuan does not allege that he has been prescribed mandatory medications that he must take on a daily basis, and the staff member's response to his Form DC-135A indicates that he does not have any mandatory medications. *See* Exhibit "B" ("You do not have mandatory medications. You need to choose your priorities.").

29. Absent factual allegations to the contrary, it appears, on the face of these pleadings, that Yuan is provided with daily exercise, which he is able to attend, because the staff member's response to Yuan's DC-135A states that the Yuan does not have any mandatory medications.

30. Accordingly, Yuan has not presented any factual allegations showing that he has a clear right to relief that he has requested, and this Petition should be dismissed.

Conclusion

Based upon the aforementioned, it is respectfully requested that this Court sustain Respondent Sobina's Preliminary Objections and dismiss the Petition for Writ of Mandamus filed by Yuan.

Respectfully Submitted,

Office of General Counsel

By: Maria G. Macus-Bryan
Maria G. Macus-Bryan
Assistant Counsel
Attorney I.D. No. 90947
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, Pa 17011
(717) 731-0444

November 26, 2008

IN THE COURT OF COMMON PLEAS OF
ERIE COUNTY, PENNSYLVANIA

INMATES OF SCI-ALBION and
INDIVIDUALLY, NING YUAN,
Petitioners,

No. 467 M.D. 2008

vi.

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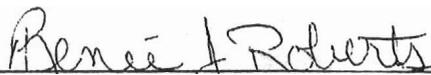
RAYMOND J. SOBINA, WARDEN,
and JOHN and JANE DOE,
Respondents

CERTIFICATE OF SERVICE

I hereby certify that I am depositing in the U.S. mail a true and correct copy of the foregoing Preliminary Objections upon the person(s) in the manner indicated below:

Service by first-class mail
addressed as follows:

Ning Yuan (HH-8622)
SCI-Albion
10745 Route 18
Albion, PA 16475-0001



Renée J. Roberts
Legal Assistant
Pennsylvania Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: November 26, 2008

Time/Date Stamp

Time/Date Stamp

**IN THE COURT OF COMMON PLEAS OF
ERIE COUNTY, PENNSYLVANIA**

INMATES OF SCI-ALBION and
INDIVIDUALLY, NING YUAN,
Petitioners,

No. 467 M.D. 2008

v.

RAYMOND J. SOBINA, WARDEN,
and JOHN and JANE DOE,
Respondents

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PROPOSED ORDER

NOW, this _____ day of _____ 2008, upon consideration of the
Preliminary Objections of the Respondent Raymond Sobina, it is hereby
ORDERED that the Respondent's Preliminary Objections are **SUSTAINED** and
the Petition for Writ of Mandamus is hereby **DISMISSED**.

BY THE COURT:

J.