

Deal

GLUE WILKINS¹,

Plaintiff,

vs

MELISSA HENICO,

Defendants.

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

: NO. 11533 CD 2014

INDIANA COUNTY
PROthonARY AND
CLERK OF COURTS
2015 JAN 21 PM 12:35

OPINION AND ORDER OF COURT

MARTIN, P.J.

This matter has come before the Court on Defendant's Motion for Dismissal.

The Court will dispose of the case based upon the parties' briefs and filings.

The Plaintiff is an inmate at the Pine Grove State Correctional facility located in Indiana County. He is incarcerated as a result of sentences issued by the Court of Common Pleas of Dauphin County. The Defendant, Melissa Henico, is an employee of the Department of Corrections at the State Correctional Institution at Pine Grove. The basis of Plaintiff's Complaint is that Ms. Henico has denied his request to correct, what he maintains, is an error in his credit for time served as set forth in his DC 300B Form.

The Department of Corrections has filed a Motion for Dismissal pursuant to 42 Pa.C.S.A. §6602(e) and (f). These sections of the statute provide as follows.

(e) Dismissal of litigation. – Notwithstanding any filing fee which has been paid, the court shall dismiss prison conditions litigation at any time, including prior to service on the defendant, if the court determines any of the following:

- (1) The allegation of indigency is untrue.

¹ The Plaintiff's correct name is Allen Wilkins.

(2) The prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted or the defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted, would preclude the relief.

The court may reinstate the prison conditions litigation where the dismissal is based upon an untrue allegation of indigency and the prisoner establishes to the satisfaction of the court that the untrue information was not known to the prisoner.

(f) Abusive litigation. – If the prisoner has previously filed prison conditions litigation and:

(1) three or more of these prior civil actions have been dismissed pursuant to subsection (e)(2); or

(2) the prisoner has previously filed prison conditions litigation against a person named as a defendant in the instant action or a person serving in the same official capacity as a named defendant and a court made a finding that the prior action was filed in bad faith or that the prisoner knowingly presented false evidence or testimony at a hearing or trial; the court may dismiss a request for preliminary injunctive relief or a temporary restraining order which makes a credible allegation that the prisoner is in imminent danger of serious bodily injury.

The Department of Corrections claims that the present litigation is frivolous and that the Plaintiff is an abusive litigator.

In support of its claim that the Plaintiff is an abusive litigator, the Department of Corrections references four (4) cases filed by the Defendant which have been dismissed as being frivolous. These cases are as follows.

Glue Wilkins vs Klein – No. 04-CV-2380(MD PA) – November 8, 2004

Glue Wilkins vs Dauphin County, Pennsylvania – No. 05-CV-901 (MD PA)
– May 9, 2005

Glue Wilkins vs The Honorable Joseph H. Kleinfelter – No. 6-CV-14 (MD PA) – January 26, 2006

Glue Wilkins vs Thomas Corbett – No. 06 CV 117 (MD PA) – January 31, 2006

Section 42 Pa.C.S.A. §6601 defines prison litigation and frivolous as follows:

“Prison conditions litigation.” A civil proceeding arising in whole or in part under Federal or State law with respect to the conditions of confinement or the effects of actions by a government party on the life of an individual confined in prison.

“Frivolous.” Lacking an arguable basis either in law or in fact.

The Plaintiff’s claim against Ms. Henico is based upon his allegation that she refuses to correct or change his DC 300B form which was prepared and submitted by the sentencing court. Even if Ms. Henico were inclined to do so, Ms. Henico has no authority to change the form. The form can only be amended or corrected by the sentencing court which is the Dauphin County Court of Common Pleas. Likewise, this Court has no authority to change the form.

The Supreme Court in McRay v. Pennsylvania Dept. of Corrections, 582 Pa. 440, 872 A.2d 1127, 1133 (2005) held as follows.

It is beyond cavil that the Department has a duty to credit McCray, as well as all inmates, for all statutorily mandated periods of incarceration. *Martin v. Pennsylvania Bd. Of Probation & Parole*, 576 Pa. 588, 840 A.2d 299 (2003). However, this does not end the matter. The Department is an executive branch agency that is charged with faithfully implementing sentences imposed by the courts. As part of the executive branch, the Department lacks the power to adjudicate the legality of a sentence or to add or delete sentencing conditions.

The Superior Court, following the precedent set forth by the Supreme Court in McRay, supra., held in Commonwealth vs Mann, 957 A.2d 746, 749 (Pa.Super. 2008) as follows.

The Department of Corrections, an executive agency, has no power to change sentences, or to add or remove sentencing conditions, including credit for time served; this power is vested in the sentencing court.

The Court for these reasons finds that the Plaintiff's action against Ms. Henico is frivolous and that the Plaintiff is an abusive litigator as defined by the Act. The Plaintiff's Complaint is therefore dismissed with prejudice.

Therefore, the Court makes the following Order of Court.

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ORDER OF COURT

MARTIN, P.J.

AND NOW, this 21st day of January 2015, this matter having come before the Court on the Pennsylvania Department of Corrections' Motion to Dismiss, it is hereby ORDERED and DIRECTED that the Motion is granted. The Plaintiff's Complaint is dismissed with prejudice.

BY THE COURT,



President Judge