

Pennsylvania and United States Constitutions. Pinet also is seeking an injunction requiring DOC to immediately cease and desist from making deductions from his inmate account for sentenced costs and fines. In addition, Pinet has filed a motion for summary judgment which is also presently before this Court for disposition.

On or about January 22, 1999, Pinet was convicted of various drug offenses and sentenced to serve five to ten years incarceration in a DOC adult corrections facility. See Petition for Review at p. 2. As part of Pinet's sentence, the trial court imposed the payment of fines, fees, costs and restitution. Id.

In the petition for review, Pinet avers that the deductions DOC is currently making from his account to satisfy the payment of fines, fees, costs and restitution imposed as part of his sentence are without his consent and not authorized by court order. Pinet avers that DOC is not authorized to make any deductions from his inmate account and that in making the deductions, DOC is acting unilaterally, without legal authority in violation of Act 84 and the Pennsylvania and United States Constitutions. Pinet avers further that prior to making any deductions to satisfy the payment of the court imposed fines, fees, costs and restitution, the sentencing court was required to conduct a pre-taking "ability to pay" hearing pursuant to Act 84. As support for this averment, Pinet cites this Court's decision in Boofer v. Lotz, 797 A.2d 1047 (Pa. Cmwlth. 2002), petition for allowance of appeal granted, 572 Pa. 567, 817 A.2d 1079 (2003). Pinet avers that DOC knew or should have known that it could not make any non-consensual deductions from his inmate account without first affording him the procedural and substantive due process rights under the Pennsylvania and United States Constitutions.

We will first address the demurrer to the petition for review. DOC avers that Pinet's petition for review fails to state a cause of action upon which

relief may be granted because Pinet has no clear right to declaratory or injunctive relief.

Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. Simmons v. Township of Moon, 601 A.2d 425, 428 (Pa. Cmwlth. 1991). To prevail on preliminary objections in the nature of a demurrer to a claim for injunctive relief, a court must find that the petition is clearly insufficient to establish a right to injunctive relief, and any doubt must be resolved in favor of overruling the demurrer. P.J.S. v. Pennsylvania State Ethics Commission, 669 A.2d 1105, 1113 (Pa. Cmwlth. 1996).

To prevail in an action for injunction, a party must establish that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be compensated by damages, and that greater injury will result from refusing rather than granting the relief requested. Id. A court may not grant injunctive relief where an adequate remedy exists at law. Id.

The provisions of the Declaratory Judgments Act, 42 Pa.C.S. §§7531-7541, governs petitions for declaratory judgment. Ronald H. Clark, Inc. v. Township of Hamilton, 562 A.2d 965 (Pa. Cmwlth. 1989). Declaratory judgments are not obtainable as a matter of right. Id. The granting of a petition for declaratory judgment is a matter lying within the sound discretion of a court of original jurisdiction. Id. Section 7533, 42 Pa.C.S. §7533, provides that any person whose rights, status or other legal relations are affected by a statute may have determined any question of construction or validity arising under the statute and obtain a declaration of rights, status, or other legal relations thereunder. Department of Public Welfare v. Portnoy, 566 A.2d 336 (Pa. Cmwlth. 1989), affirmed, 531 Pa. 320, 612 A.2d 1349 (1992).

The questions of whether DOC is authorized to make monetary deductions from an inmate's account to pay court ordered fines and costs and whether an inmate is entitled to a pre-taking "ability to pay" hearing by the sentencing court to determine his financial ability to pay his court ordered obligations prior to DOC making any deductions to his inmate account have recently been decided by this Court in George v. Beard, 824 A.2d 393 (Pa. Cmwlth. 2003). In holding that the inmate was not entitled to a pre-taking "ability to pay" hearing and that Act 84 authorizes DOC to make monetary deductions from an inmate's account, this Court reasoned as follows:²

Pursuant to *Section 9726(b)* of the Sentencing Code, a sentencing court may impose a fine in addition to another sentence involving confinement, when:

- (1) the defendant has derived a pecuniary gain from the crime; or
- (2) the court is of the opinion that a fine is specially adapted to deterrence of the crime involved or to the correction of the defendant.

42 Pa. C.S. §9726(b).

The sentencing court shall not order a defendant to pay a fine unless it appears of record that the defendant is able to pay. *42 Pa. C.S. §9726(c)*. Before imposing a fine, the sentencing court must make findings on a defendant's financial ability to pay. *42 Pa. C.S.*

² This Court in George noted that while George cited Boofer to support the allegation that he was entitled to a hearing to determine his financial ability to pay his sentence obligations, Boofer, did not, however, address the issues discussed by the Court in George. George, 824 A.2d at 395 n.1. We hold that the same applies here. Boofer is clearly distinguishable from the present case. In Boofer, an inmate appealed a trial court's order denying his request to stop deductions from the inmate's account that were taken pursuant to a letter from the clerk of courts rather than the sentencing court's order.

§9726(d). Thus, if at the time of sentencing it appears a defendant is unable to pay a fine, a judge should consider alternative penalties. Commonwealth v. Schwartz, 418 A.2d 637 (Pa. Super. 1980).

It is reasonable to expect any contest to a defendant's ability to pay sentenced fines and costs will be raised as early as possible. An early challenge may enable the sentencing judge to reconsider the sentence. Also, a timely appeal or timely petition for postconviction relief may allow for correction of a sentence imposing impossible financial burdens.

The Post Conviction Relief Act, 42 Pa. C.S. §§9541-9546 (PCRA), is "the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies" 42 Pa. C.S. §9542. The PCRA applies to offenders serving a sentence requiring imprisonment or special supervision. 42 Pa. C.S. §9543(a)(1). It does not apply to offenders whose only sentence obligations are financial. Commonwealth v. James, 771 A.2d 33 (Pa. Super. 2001); Commonwealth v. Fisher, 703 A.2d 714 (Pa. Super. 1997). A petition under the PCRA generally must "be filed within one year of the date the judgment [of sentence] becomes final" 42 Pa. C.S. §9545(b). Under the PCRA, "an issue is waived if the petitioner could have raised it but failed to do so ... during unitary review, on appeal or in a prior state postconviction proceeding." 42 Pa. C.S. §9544(b).

Different considerations arise for offenders whose only obligations are financial. In Tate v. Short, 401 U.S. 395 (1971), the United States Supreme Court held it was unconstitutional to imprison an indigent individual for failure to pay a fine. Thereafter, the Pennsylvania Supreme Court opined:

We believe that the [United States] Supreme Court has made it plain that a defendant may not be incarcerated merely because he cannot make full payment of a fine. Therefore, we hold that the appellants must be given the opportunity to establish that they are unable to pay the fine.

Commonwealth ex rel. Parrish v. Cliff, 451 Pa. 427, 433-34, 304 A.2d 158, 161 (1973).

Before an offender can be confined solely for nonpayment of financial obligations he or she must be given an opportunity to establish inability to pay. Schwartz. If the offender establishes indigence, he or she will be allowed to make payments in reasonable installments. Id. Thus, if an offender defaults in the payment of a fine or court costs after imposition of sentence, the fines and costs court may conduct a hearing to ascertain information regarding an offender's financial resources. 42 Pa. C.S. §9730(b)(1). If the fines and costs court determines the offender is able to pay fines or costs, it may turn the delinquent account over to a private collection agency or impose imprisonment for nonpayment, as provided by law. 42 Pa. C.S. §9730(b)(2).

Imprisonment for nonpayment of financial obligations may be imposed on a finding of contempt for failure to pay a fine, 42 Pa. C.S. §9772, on a finding of contempt for failure to make restitution, 18 Pa. C.S. 1106, or on a finding of violation of a specific condition of supervision. 42 Pa. C.S. §9773. Each proceeding requires a hearing.

Considering the foregoing, it is clear that while in custody under sentence, an offender's sole avenues to challenge payment of financial aspects of the sentence are direct appeal or postconviction proceedings. These avenues are adequate remedies at law for an offender in custody to challenge any aspect of the sentence. If, however, failure to pay sentenced financial obligations exposes an offender to initial confinement, additional confinement or increased conditions of supervision, a hearing is warranted. Stated differently, if an offender is notified that he or she is charged with contempt or with probation and parole violations as a result of failure to pay fines, costs or restitution, the offender should be afforded a hearing.

Obviously, George's petition fails to state a cause of action for which relief may be granted. George does not and cannot aver he is exposed to initial confinement, additional confinement, or increased conditions of supervision as a result of nonpayment. Moreover, George's petition fails to aver facts, as opposed to bald conclusions, to support the claim that the deductions create a financial burden he cannot afford. By way of example, George does not plead the balance in his inmate account. Consequently, George is not entitled to a hearing.

B.

Pursuant to *Section 9728(b)* of the Sentencing Code, commonly referred to as Act 84:

(3) The county clerk of courts shall, upon sentencing, ... transmit to ... the ... agent designated by the county commissioners of the county with the approval of the president judge of the county and to the ... [DOC] ... copies of all orders for restitution ... reparation, fees, costs, fines and penalties.

....

(5) The . . . [DOC] shall be authorized to make monetary deductions from inmate personal accounts for the purpose of collecting restitution or any other court-ordered obligation. Any amount deducted shall be transmitted by the [DOC] ... to the probation department of the county or other agent designated by the county commissioners of the county

42 Pa.C.S. §9728(b) (emphasis added).

Subsection (b)(5) authorizes DOC to make monetary deductions from an inmate's account to pay court ordered fines and costs and does not impose prior court authorization as a threshold condition. See Commonwealth v. Fleming, 804 A.2d 669 (Pa. Super. 2002); Sweeney v. Lotz, 787 A.2d 449 (Pa. Cmwlth. 2001). As noted, George concedes that fines and costs were imposed as part of his criminal sentence. Petition,

¶5. It is the judgment of sentence which enables DOC to deduct the funds. Thus, George may not challenge that judgment by seeking to enjoin DOC from carrying out its statutorily mandated duty to deduct the funds. Harding v. Superintendent Stickman of SCI Greene, [823 A.2d 1110 (Pa. Cmwlth. 2003)] (inmate may not challenge substance of sentencing court's order by seeking an injunction against DOC). Compare Commonwealth v. Baker, 782 A.2d 584 (Pa. Super. 2001) (inmate appealed trial court's order directing deductions from inmate's account for costs and restitution).

George, 824 A.2d at 395-397.

Accordingly, based on the same reasoning as set forth by this Court in George, we hold that DOC is authorized pursuant to Act 84 to make monetary deductions from Pinet's inmate account to pay his court ordered fines and costs without prior court authorization as a threshold condition. Also, as in George, Pinet concedes that fines, costs, fees and restitution were imposed as part of his criminal sentence. Therefore, because it is the judgment of sentence which enables DOC to deduct the funds, Pinet may not challenge that judgment by seeking to enjoin DOC from carrying out its statutorily mandated duty to deduct the funds. Moreover, Pinet has not established that he was entitled to a pre-taking "ability to pay" hearing prior to DOC making such deductions from his inmate account. Again, as in George, Pinet does not and cannot aver that he was exposed to initial confinement, additional confinement, or increased conditions of supervision as a result of nonpayment of the court imposed financial obligations. Nor does Pinet allege facts to support the claim that the deductions create a financial burden he cannot afford.

Finally, as in George, Pinet alleges that DOC deducted funds from his account without a court order from the sentencing court authorizing deductions. However, in his petition for review, Pinet concedes that as part of his sentence, the

trial court imposed the payment of fines, fees, costs and restitution. Therefore, this claim also lacks merit.

For the foregoing reasons, DOC's demurrer is sustained because Pinet has no clear right to injunctive relief or a declaratory judgment. Accordingly, Pinet's petition for review is dismissed with prejudice. Due to the sustaining of the demurrer and the dismissal of the petition for review with prejudice, Pinet's motion for summary judgment must be denied as moot.

JAMES R. KELLEY, Senior Judge

