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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Frederick T. Ray, III,
Petitioner

v. : No. 453 M.D. 2007
: SUBMITTED: May 16, 2008

Department of Corrections,
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER

FILED: July 24, 2008

Before us for disposition in our original jurisdiction is the Department of Corrections' (Department) preliminary objection in the nature of a demurrer to the petition for review of *pro se* petitioner Frederick T. Ray, III, challenging the Department's failure to adhere to DC-ADM 804, §VI, B.12, which requires the installation of lockboxes designated for inmate grievances and/or Inmate Request to Staff forms in all Level 5 Housing Units.¹ For the reasons set forth below, we sustain the Department's preliminary objection and dismiss Petitioner's petition.

¹ In its entirety, the policy provides as follows:
Each Facility Manager shall install lockboxes designated for inmate grievances and/or Inmate Request to Staff forms in all Level 5 Housing Units. The lock-boxes shall be placed in a
(Footnote continued on next page...)

The petition states the background of this case as follows.² Currently confined at State Correctional Institution (SCI) Greene in a Level 5 Housing Unit, Petitioner alleges that there are no lockboxes, the purpose of which he avers “is to protect inmates’ ability to communicate their grievances without staff interference.” Petition, paragraph 14. He maintains that the absence of lockboxes “is the foundation of the structure of censorship allowing officers to screen outgoing institutional and postal mail by taking it of [sic] the block pod to indentify and target grievants for retaliation.” Petition, paragraph 6. He alleges that “when officers identify complainer, they communicate to co-workers to deny the complainer meals, outdoor exercise, showers and incoming mail in retaliation for complaining about staff abuse.” Petition, paragraph 7. In addition, he avers that “as a result of this structure of retaliation, [he] has been deprived of his law books, interception of outgoing grievances and grievance appeals to prevent exhaustion of remedies pursuant to PLRA,³ staff responses to informal

(continued...)

location easily accessible to an inmate being escorted to the individual exercise units. The inmate will be permitted to place the DC-135A form and/or grievance in this lockbox. If an inmate chooses not to go to an individual exercise unit, he/she may have a staff member place the item in the lockbox.

Ray’s Petition, Exhibit A.

² When considering preliminary objections, we note that the court must accept as true all well-pled allegations of material fact as well as all inferences reasonably deducible therefrom. However, the court need not accept conclusions of law or expressions of opinion. For preliminary objections to be sustained, it must appear with certainty that the law will not permit recovery, and any doubt must be resolved in favor of the non-moving party.

Commonwealth v. Richmond Twp., 917 A.2d 397, 400 n.6 (Pa. Cmwlth. 2007) (citations omitted).

³ Petitioner is presumably referring to the Prison Litigation Reform Act (PLRA), 42 Pa. C.S. §§ 6601-6608.

complaints and interception of legal material requests through paging system. . . .”
Petition, paragraph 9 (footnote added).

Moreover, Petitioner avers that other SCIs are compliant with the lockbox mandate, causing him to be treated differently than other similarly situated prisoners confined in Level 5 Housing Units. He asserts that there is “no rational basis serving a legitimate penological interest justifying [this] difference in treatment.” Petition, paragraph 20.

In his claim for relief, Petitioner requests injunctive relief “requiring compliance with DC[-]ADM 804 by placing grievance lockboxes on all housing units and enjoining SCI Greene staff from censoring and retaliating against [him] for filing grievances and assisting others in filing grievances.” Petition, claim for relief. In addition, he requests “a declaratory judgment [that] the actions of respondents violated Petitioner[']s state constitutional rights.” *Id.*

In response, the Department filed a preliminary objection in the nature of a demurrer asserting that Petitioner has failed to state a cause of action as a matter of law because the lockbox directive creates no constitutional rights. In addition, the Department maintains that Petitioner has not pled a cause of action for a denial of court access. In opposition to the preliminary objection, Petitioner argues that he has pled facts sufficient to support claims for retaliation and a denial of equal protection. We turn first to the issue of whether Petitioner has pled facts sufficient to support a retaliation claim, the discussion of which necessarily incorporates the Department’s contention that Petitioner has no constitutional rights in relation to lockboxes.

In order to assert a viable retaliation claim, Ray had to aver facts which, if proven, would establish that the conduct which led to the alleged

retaliation was constitutionally protected, that he suffered some adverse action at the hands of the prison officials that would have been sufficient to deter a person of ordinary firmness from exercising his constitutional rights and that there was a causal link between the exercise of his constitutional rights and the adverse action taken against him. *Bailey v. Miller*, 943 A.2d 1007 (Pa. Cmwlth. 2008).

Petitioner maintains that he satisfied the first criterion for a retaliation claim, claiming that filing grievances constitutes protected conduct under the First Amendment. *See Walker v. Thompson*, 288 F.3d 1005 (7th Cir. 2002) (if grievance is constitutionally protected speech, then retaliation therefor may be unconstitutional).⁴ In addition, Petitioner asserts that, pursuant to the PLRA, filing grievances is a prerequisite to exercising one's right of access to courts. Consequently, Petitioner contends that he met the first criterion.

In response, the Department asserts that Petitioner has failed to satisfy the first criterion because he has no constitutionally protected right to file grievances. *Luckett v. Blaine*, 850 A.2d 811 (Pa. Cmwlth. 2004); *Weaver v. Pennsylvania Department of Corrections*, 829 A.2d 750 (Pa. Cmwlth. 2003). Specifically, it maintains that its grievance process does not create any enforceable right in a Pennsylvania state inmate because the grievance procedures are established by departmental regulations and, therefore, do not invoke constitutional rights. *Luckett*. It argues, therefore, that because Petitioner has no constitutionally protected rights vis-à-vis the grievance process, he has no constitutionally

⁴ Petitioner also relies upon several unpublished federal decisions in support of his assertion. This court, however, may not rely upon those opinions as binding precedent. Pursuant to Commonwealth Court I.O.P. 414, this court is prohibited from citing even its own unpublished opinions.

protected right to place his grievances or those of others in a lockbox.⁵ It further points out that Petitioner has not averred that he is unable to file grievances or requests to staff, only that he cannot put them in a lockbox. Finally, it maintains that the mere absence of lockboxes does not provide any indicia that grievances are censored.

We agree that Petitioner has no constitutionally protected right to place his grievances or those of others in lockboxes. While expressing a grievance arguably may be protected constitutional conduct,⁶ “grievance procedures” established by the Department, in and of themselves, “do not implicate rights under the United States and Pennsylvania Constitutions.” *Luckett*, 850 A.2d at 820. “[T]he procedures for pursuing inmate grievances and misconduct appeals are a matter for internal prison administration”⁷ and we find the Department’s decision not to adhere to the lockbox directive to be just such an internal matter. To reiterate, Petitioner has not alleged that he has no method by which to file grievances, only that the lockbox option is not available to him. Because we have concluded that Petitioner has no constitutionally protected right to place grievances in lockboxes, we need not address whether Petitioner has pled facts sufficient to establish the remaining two criteria necessary for a retaliation claim. We turn, therefore, to the Department’s argument concerning a potential denial of court access claim.

The Department argues that Petitioner has failed to plead facts adequate to establish a denial of court access claim because he did not identify a

⁵ The Department notes that Petitioner has no constitutional right to assist other inmates with their grievance filings. *Shaw v. Murphy*, 532 U.S. 223 (2001).

⁶ See *Walker*.

⁷ *Weaver*, 829 A.2d at 751.

case that was dismissed for failure to satisfy some technical requirement due to deficiencies in the prison's legal assistance facilities or plead that he was so stymied by the inadequacies in the law library that he was unable even to file a complaint. Additionally, it asserts that, to the extent that Petitioner seeks a declaratory judgment, it is improper to determine rights in anticipation of events that may never occur, for consideration of moot issues or as a method of obtaining advisory opinions from a court. *Gulnac v. S. Butler County Sch. Dist.*, 526 Pa. 483, 587 A.2d 699 (1991). Thus, arguing that Petitioner has failed to demonstrate that the Department violated any of his rights or that he has a clear right to injunctive relief,⁸ the Department contends that this court should dismiss Petitioner's case for failure to state a cause of action.

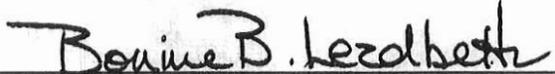
We agree that Petitioner has failed to state a cause of action. There is no constitutionally protected right to place grievances or staff requests in a lockbox. In addition, to the extent that any of Petitioner's allegations imply a denial of court access, they lack the requisite specificity to state a cause of action.

Finally, Petitioner claims that he has been denied equal protection. He alleges that he is being treated differently from other similarly situated prisoners in Level 5 Housing Units because other SCIs are compliant with the lockbox directive. Since Petitioner has no constitutionally protected right to place grievances or staff requests in a lockbox, any difference of treatment between Level 5 Housing Unit prisoners regarding the availability of lockboxes merits only a rational basis level of scrutiny. *See Meggett v. Dep't of Corr.*, 892 A.2d 872, 885 (Pa. Cmwlth. 2006). In its preliminary objection, the Department states that, "Inmates now file grievances by placing them in the regular prison mail box, to

⁸ *Harding v. Stickman*, 823 A.2d 1110 (Pa. Cmwlth. 2003).

which only mailroom employees have a key. As an administrative matter, this protocol has helped speed up the time grievances arrive at the Superintendent's office for processing." Preliminary Objection at p.2, n.2. We conclude that this proffered justification is sufficient to establish a rational basis for the Department's action.⁹

Accordingly, we sustain the Department's preliminary objection in the nature of a demurrer and dismiss the petition for review.


BONNIE BRIGANCE LEADBETTER,
President Judge

⁹ As has frequently been noted, when conducting an examination under the rational basis test, evidence is not required to justify the classification. Rather, "the courts are free to hypothesize a legitimate state goal which the classification serves." *Diwara v. State Bd. of Cosmetology*, 852 A.2d 1279, 1284 (Pa. Cmwlth. 2004). Thus we believe we may accept the Department's proffered justification without demanding factual proof thereof, particularly since Petitioner has not contradicted the Department's averment concerning use of the regular prison mailbox.

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ORDER

AND NOW, this 24th day of July, 2008, Respondent's preliminary objection in the nature of a demurrer in the above captioned matter is hereby SUSTAINED and Petitioner's petition for review is DISMISSED.



BONNIE BRIGANCE LEADBETTER,
President Judge

Certified from the Record

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and Order Exit