

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregory Rowe, :
Petitioner :
 :
v. : No. 701 M.D. 2010
 : Submitted: March 4, 2011
Pa. Dept. of Corrections, D.O.C., :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: March 24, 2011

Before this Court are preliminary objections filed by the Pennsylvania Department of Corrections (Department) in response to a *pro se* petition for review filed by Gregory Rowe (Rowe), an inmate incarcerated at the State Correctional Institution at Albion. In his petition for review, Rowe requests this Court to issue an order to enjoin the Department from processing funds directed to inmates within its custody through the use of the third party contractor, J-Pay Lockbox Services, Inc. (JPay). For the reasons that follow, the Department's preliminary objections are sustained.

On September 1, 2010, the Department began using JPay to process all money orders sent to inmates in the custody of the Department to one location

instead of to each Department institution. The information regarding the new policy provides:

The lock box is a service that simplifies collection and processing of Money Orders by having them mailed directly to a single location. This service will allow the funds to be posted to inmate accounts electronically, resulting in quicker access to the deposited funds. JPAY is providing this service at **NO COST** to PA DOC inmates or Family/Friends. Postal Service money orders are the preferred method and will post quicker to inmate accounts. JPAY will accept **ALL** money orders and post to inmates accounts after clearing.

(Department's Brief, Exhibit D.) (Emphasis in original.) Pursuant to this new policy between the Department and JPay, JPay accepts all money orders provided that a properly executed deposit slip is submitted with the money order. Deposit slips are available in all Department visiting rooms, on the Department's website and on JPay's website. The information above, indicating that there is no cost associated with the service, is in direct contradiction to the information also taken from Exhibit D under the heading "Frequently Asked Questions – **WHAT IS THE JPAY LOCK BOX?**," and is in direct contradiction to another "Frequently Asked Question – **WHAT IF FAMILY/FRIENDS CANNOT GET A DEPOSIT SLIP OR SEND A MONEY ORDER? PAYMENTS CAN BE MADE BY,**" indicating that payment can be made using JPay's website on the internet, JPay's toll-free number or at a JPay walk-in location, and there is a fee associated with all three.

In response to the Department's new policy with JPay, Rowe filed a petition for review alleging that this new policy states that the money order service

is at “no cost” to the sender and encourages the sender to use the website, yet omits that such service charges a fee. Further, the new policy states that prisoners can receive funds only if the funds are electronically mailed or that money orders must be accompanied by specific debit slips. Therefore, money sent to a prisoner cannot be processed unless the sender has access to a computer or pre-emptively receives a deposit slip from the prisoner. Rowe contends that the new policy:

- creates a discriminated class of institutionalized persons in violation of State and Federal Law;
- violates the Good Faith and Fairness Practices of Pennsylvania Administrative Law;
- violates the Prisoner-Department contract that prisoners sign upon initial reception; places an undue burden upon prisoners and their families in obtaining funds for basic items of necessity, i.e., telephone cards, legal materials, etc.; and
- does not state a penological interest.

Rowe states that he has filed a grievance regarding this matter but has not received a final remedy. He requests this Court to issue an order directing the Department to take corrective action regarding the new policy.

In response, the Department has filed preliminary objections requesting that we dismiss Rowe’s petition for review alleging that Rowe has failed to state a claim upon which relief can be granted because (1) Rowe has failed to exhaust his administrative remedies; (2) Rowe lacks standing to raise the rights of his family, assuming they present a viable claim; (3) failed to set forth a

cognizable constitutional claim, i.e., the Department's refusal to process money orders does not implicate a protected constitutional right; and (4) failed to comply with Pa. R.A.P. 1513(e) and Pa. R.C.P. No. 1018.1 for failing to affix a notice to defend to his petition for review. We will address the Department's arguments *in seriatim*.¹

Administrative law requires that if an adequate remedy is available, it must first be exhausted before an appeal may be taken to this Court, i.e., a state court will only entertain a petition for review that appeals the final order by the relevant government agency. *Waters v. Department of Corrections*, 509 A.2d 430 (Pa. Cmwlth. 1986). The Department specifically provides DC-ADM 804 at 37 Pa. Code §93.9:

§93.9. Inmate complaints.

(a). The Department will maintain an inmate grievance system which will permit any inmate to seek review of problems which the inmate experiences during the course of confinement. The system will provide for review and resolution of inmate grievances at the most decentralized level possible. It will also provide for review of the initial decision making and for possible appeal to the Central Office of the Department. An inmate will not be disciplined for the good faith use of the grievance systems. However, an inmate who submits a grievance for review which is false, frivolous or malicious may be subject to appropriate disciplinary procedures. A frivolous grievance is one in which the

¹ We will sustain preliminary objections if, after accepting all well-pled facts as true and accepting all reasonable inferences that follow from those facts, the law will not allow recovery on the fact of the complaint. *Humphrey v. Department of Corrections*, 939 A.2d 987 (Pa. Cmwlth. 2007). Only when the circumstances are free from doubt will the preliminary objections be sustained.

allegations or the relief sought lack any arguable basis in fact as set forth in DE-ADM 804 – Inmate Grievance System, which is disseminated to inmates.

(b) Inmates may also pursue available remedies in State and Federal court.

Under DC-ADM 804, an appeal from the superintendent level constitutes a final order. *Humphrey*. Unless a prisoner’s claim falls under an established exception, his petition must be barred for failure to exhaust all administrative remedies. One of the established exceptions is a “constitutional attack,” see *Balfour Beatty Construction v. Department of Transportation*, 783 A.2d 901, 906 (Pa. Cmwlth. 2001), an extraordinarily narrow exception, in which the prisoner must challenge a regulation or statute in its entirety and claim that it clearly violates a constitutional right. The facts must not be in dispute. “The existence of a constitutional issue must be clear and the mere allegation of the presence of a constitutional question is not sufficient to excuse the failure to exhaust administrative remedies.” *Humphrey*, 939 A.2d at 993.

In this case, Rowe has not challenged a regulation or statute in its entirety. He is challenging a contract. However, this Court has held that the Department’s administrative remedy for prisoner grievances never gives rise to an appealable order unless it involves a constitutional right. *Portlatin v. Department of Corrections*, 979 A.2d 944 (Pa. Cmwlth. 2009). Therefore, Rowe’s request for corrective action is denied based on this Court’s lack of jurisdiction. Consequently, we need not address the remaining preliminary objections raised by the Department.

Accordingly, the Department's preliminary objections are sustained, and Rowe's petition for review is dismissed.

DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregory Rowe, :
Petitioner :
 :
v. : No. 701 M.D. 2010
 :
Pa. Dept. of Corrections, D.O.C., :
Respondent :

ORDER

AND NOW, this 24th day of March, 2011, the preliminary objections filed by the Pennsylvania Department of Corrections are sustained and the petition for review filed by Gregory Rowe is dismissed.

DAN PELLEGRINI, JUDGE