COMMONWEALTH OF PENNSYLVANIA

ALTON D. BROWN	:	BEFORE THE BOARD OF CLAIMS
	:	
VS.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF CORRECTIONS	:	DOCKET NO. 4143

OPINION

Plaintiff Alton D. Brown, an inmate at the State Correctional Institution ("SCI")-Greene, initiated this action with the filing of an "Application for Leave to Proceed In Forma Pauperis" and a complaint alleging that the Department of Correction ("DOC" or "Department") breached several asserted oral contracts. These alleged "contracts" relate to the Department's handling of the Plaintiff's personal property upon his transfer from one correctional institute to another, various grievance and disciplinary matters, and a alleged "promise" to provide Plaintiff with a "high calorie/high protein diet." In eight counts, Plaintiff seeks damages from the Department totaling $28,390,000.

Mr. Brown's petition to proceed in forma pauperis is filed pursuant to Rule 240 of the Pennsylvania Rules of Civil Procedure, which sets forth the standards under which a court may grant an indigent individual the opportunity to proceed with an action without payment of the usual costs. However, Rule 240(j)(1) provides, in relevant part, as follows:

> If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court, prior to acting on the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

An action is considered "frivolous" if it lacks any basis in law or fact. Robinson v. Pennsylvania Board of Probation and Parole, 582 A.2d 857, 860 (Pa. 1990). An individual seeking to proceed in forma pauperis has the responsibility to present viable causes of action. Conover v. Mikosky, 609 A.2d 558, 560 (Pa. Super. 1992). Rule 240(j) requires that the Board review the action to determine frivolity prior to addressing the merits of the motion. Ocasio v. Prison Health Services, 979 A.2d 352, 355 (Pa. Super. 2009). Accordingly, we must examine Plaintiff's complaint to determine whether or not it is frivolous.

Mr. Brown's complaint contains eight counts. Two counts, which the Plaintiff identifies as "Breach of Quasi-Contract and Restitution" (Count I and Count V) are based on the Department's alleged violation of the Department's rules and regulations. Six are "Breach of Contract" counts based on several alleged oral "agreements" he made with prison officials between May and November 2015 relating to property which plaintiff alleges the Department improperly confiscated from him and/or grievance or disciplinary procedure activities (Counts II, III, IV, VI, and VII) plus an alleged promise to provide Plaintiff with a "high calorie/high protein diet." (Count VIII).

Count I and Count V.

In Counts I and V of his complaint, the Plaintiff appears to assert that the Department violated unspecified "prison rules and regulations that govern transportation and inventory of prisoners [sic] property" and accordingly breached a "quasi-contract" between Mr. Brown and the Department. Petitioner seeks damages in the amount of $30,000 and $20,000,000, respectively, in these two counts.

Counts II, III, IV, VI, VII and VIII.

The Plaintiff bases Count II on an alleged May 11, 2015 "agreement" between himself and the SCI-Smithfield property sergeant. Mr. Brown states in his complaint that, prior to Mr. Brown's planned transfer from SCI-Smithfield to SCI-Green, he threatened the property sergeant that "they would have to use force on him" to accomplish the transfer if the Department "did not properly inventory [Mr. Brown's] approximately thirty-four (34) boxes in accordance with [the Department's] policy and procedure . . .." Mr. Brown asserts that that he subsequently agreed to voluntarily accede to the transfer in exchange for a "guarantee that all of [Mr. Brown's] property would leave with him, and that [the property sergeant] would be personally responsible for any missing property and ensure it's [sic] return." The Plaintiff alleges that the Department breached this "agreement" in that several boxes of his property were missing when he arrived at SCI-Greene and that his "property was open [sic], searched, and items confiscated outside of his presence." The Plaintiff seeks $100,000 in damages for this count.

Count III relates to an "agreement" allegedly made between Mr. Brown and a Program Review Committee (apparently part of a prison grievance proceeding) on July 28, 2015, whereby Mr. Brown "accepted" a limit of two boxes of "legal property" to be kept in his cell (rather than ten boxes which he was requesting), and a weekly "property exchange" rather than "the normal thirty (30) day exchanges." The Plaintiff alleges that the Department breached this agreement, and seeks damages in the amount of $3,000,000.

Count IV relates to another alleged agreement between Mr. Brown and the Program Review Committee in another grievance proceeding, in which Mr. Brown alleges that he agreed not to file further grievances or court appeals if the Department returned all his property. The

Plaintiff alleges that the Department breached this agreement, and seeks damages in the amount of $5,000,000.

Counts VI and VIII relate to alleged agreements in which Mr. Brown states that he agreed to "fully participate" in prison misconduct hearings on the condition that the Department followed its regulations and procedures. Mr. Brown alleges that the Department breached these agreements as well by, inter alia, failing to dismiss the charges and finding him guilty. The Plaintiff seeks damages of $10,000 and $50,000 respectively.

Count VIII is based on an alleged agreement between Mr. Brown and an individual identified as Dr. Jin, apparently a prison doctor at SCI-Greene. Mr. Brown alleges that Dr. Jin agreed to place Mr. Brown on a "high calorie/high protein diet" if Mr. Brown agreed to go to a local hospital for unspecified diagnosis and treatment. The Plaintiff alleges that Dr. Jin's purported promise "was a ploy to induce [the] Plaintiff into a trap set up by the Department" which resulted in Mr. Brown allegedly being assaulted while in the hospital. The Plaintiff alleges that the Department breached this agreement, and seeks damages in the amount of $200,000.

Plaintiff's Alleged "Agreements" are not Contracts.

A thorough review of the allegations in Mr. Brown's complaint, shows the gravamen of his claims to center on approximately 42 boxes of what Mr. Brown describes as his "property" comprised of "books, clothes, legal documents, shoes, postage prepaid envelopes, radio/headphones, cosmetics, property inventory receipts collected during the course of [Plaintiff's] incarceration, and other items." It is these items which Mr. Brown claims the Department improperly searched and confiscated following his transfer from SCI-Graterford to SCI-Smithfield in 2013, and a subsequent transfer from SCI-Smithfield to SCI-Greene in 2015, in

violation of the Department's policies and procedures. Other complaints relate to Department grievance procedures. In addition, Mr. Brown asserts that the Department failed to follow through on a promise allegedly made by a prison doctor to provide Plaintiff with a "high calorie/high protein diet." Throughout his complaint, Mr. Brown further asserts that the Department was motivated to prevent his full access to this property in order to prevent him from pursuing "approximately forty-two (42) active civil and criminal matters pending in various State and Federal Courts, approximately fifteen (15) RTKL matters in progress, and approximately twenty (20) prison grievances/appeals in progress."

The Department has published on its web site full-text versions of its policies and procedures, identified as DC-ADMs/Inmate Handbook Policies. Included in these are policies and procedures governing Personal Property (DC-ADM 815), the Inmate Grievance System (DC-ADM 804), Inmate Discipline (DC-ADM 801) and Food Services (DC-ADM 610). For example, DC-ADM 815 provides at Section 1.C.2.a. that an inmate scheduled for transfer to another facility will be permitted a maximum of two records center boxes (plus a television box) for shipment with the inmate. Section 1.C.2.b. provides that any additional property, including additional boxes of authorized legal materials, "will be shipped by the least expensive common carrier available (U.S. Mail, UPS, etc.) to the receiving facility, or to an address of the inmate's choice at the inmate's expense, or the items are to be destroyed."

See http://www.cor.pa.gov/Administration/Pages/DOC-Policies.aspx#.V1BnQPkrIuV

Pennsylvania's appellate courts have held repeatedly that administrative regulations or policies do not create contract rights in inmates. See e.g. Com. ex rel. Buehl v. Price, 705 A.2d 933, 936 (Pa. Cmwlth. 1997); Bullock v. Horn, 720 A.2d 1079, 1082 (Pa. Cmwlth. 1998); Oatess v. Beard, 576 A.2d 398, 1400 (Pa. Super. 1990) (prison handbook, containing administrative

directives concerning aspects of prison life and entitlements of prisoners, did not constitute a contract with an inmate). The Board, as well, has found that the Department's policies and procedures do not form the basis of a contract such as to confer Board jurisdiction under the Procurement Code. See e.g. McCool v. Commonwealth of Pennsylvania, Department of Corrections, B.O.C. Docket No. 3383 (Opinion and Order issued May 14, 2007; Mincy v. Commonwealth of Pennsylvania, Department of Corrections, et al., B.O.C. Docket No. 4068 (Opinion and Order issued February 14, 2014).

Although the reasoning in the forgoing cases vary, some finding a lack of "offer and acceptance" and some no "meeting of the minds", it also appears to the Board that each of the so called "agreements" here asserted by Plaintiff lack consideration as well because the issues complained of by Plaintiff are already covered by Department policies and procedures. It is axiomatic that consideration is an essential element of an enforceable contract. Stelmack v. Glen Alden Coal Co., 14 A.2d 127, 128 (Pa. 1940); Pennsy Supply, Inc. v. Am. Ash Recycling Corp., 895 A.2d 595, 600 (Pa. Super. 2006). Consideration consists of a benefit to the promisor or a detriment to the promisee. Id. Performance of that which one is legally obligated to do is not consideration sufficient to support a valid agreement. Cohen v. Sabin, 307 A.2d 845, 849 (Pa. 1973). Pennsylvania case law holds that forbearance to assert an invalid claim by one who has not an honest or reasonable belief in its possible validity is not considered sufficient consideration. Lombardo v. Gasparini Excavating Co., 123 A.2d 663, 665 (Pa. 1956). Whether a contract is supported by consideration presents a question of law. Pennsy Supply, 895 A.2d at 601, citing Davis & Warde, Inc. v. Tripodi, 616 A.2d 1384 (Pa. Super. 1992).

In the May 11, 2015 Agreement (Count I), the Plaintiff asserts that he promised to "voluntarily" transfer to SCI-Greene in exchange for the Department moving all of his "property"

with him, foregoing his threat that the Department would need to use force on the Plaintiff in order to accomplish the transfer. The Plaintiff does not aver, nor can it reasonably be inferred from the complaint, that he was not under an obligation to accede to the transfer from SCI-Smithfield to SCI Greene or to the manner in which his "property" was handled. Accordingly, under Cohen, his promise to voluntarily accede to the transfer is not consideration sufficient to support a valid agreement. Similarly, in Mr. Brown's "agreements" which he alleges to have been part of grievance and misconduct proceedings (Counts III, IV, VI and VII) the procedures for these activities are controlled by the Department policies and procedures already in place. Plaintiff's complaint shows no benefit to the Department or detriment to him such as to comprise consideration sufficient to support a valid agreement in these instances, nor can one be reasonably inferred therefrom. As with the other counts for alleged breach of contract, the Plaintiff's averments with respect to his October 26, 2015 "agreement" with Dr. Jin also reveals a lack of consideration. The Plaintiff's purported agreement to go to the hospital for diagnosis and treatment presented no clear detriment to the Plaintiff nor did it benefit the Department in any significant way.

Plaintiff's Claims Do Not Arise from Procurement Code Contracts.

Section 1724 of the Procurement Code (62 Pa.C.S. § 1724) defines the Board's jurisdiction as being applicable to a "contract entered into in accordance with this part and filed with the board in accordance with section 1712.1 (relating to contract controversies)." [Emphasis added]. "[T]his part" clearly refers to the Commonwealth Procurement Code itself, 62 Pa. C.S. § 101 et seq.

The Commonwealth Procurement Code defines "Contract" at Section 103 (62 Pa.C.S. § 103) as "A type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services or construction and executed by all parties in accordance with the act of October 15, 1980 (P.L. 950, No. 164) known as the Commonwealth Attorneys Act." While case law has determined that the definition of "Contract" in Section 103 may be read broadly to include contracts implied-in-law (i.e. quasi-contracts), which might arguably address the lack of a formal writing in Plaintiff's current claims (see e.g. Dep't. of Health v. Data-Quest, Inc., 972 A.2d 74, 80 (Pa. Cmwlth. 2009)), we find nothing in this case law which would dispense with the requirement that the asserted contracts relate to an agreement "for the procurement or disposal of supplies, services or construction" as those terms are defined in the Procurement Code. Even if Plaintiff had been able to plead the fundamental elements of a basic contract (which we do not believe he has done), nothing in the Plaintiff's complaint describes a contract or agreement for the procurement or disposal of supplies, services or construction entered into in accordance with the Procurement Code. 62 Pa. C.S. § 103. As a result, the Board has no jurisdiction over these claims in any event.

Given the allegations in Mr. Brown's complaint, and the applicable law, we see no contract claims in his complaint over which the Board might have jurisdiction. We therefore find Mr. Brown's complaint, filed May 18, 2016, to be a frivolous claim. Accordingly, we will refuse Mr. Brown's motion to proceed in forma pauperis and dismiss his claim in accordance with Pa. R.C.P. 240(j).

ORDER

AND NOW, this 3rd day of June, 2016, upon consideration of the Application for Leave to Proceed In Forma Pauperis and the Complaint filed by Plaintiff Alton D. Brown, it is hereby **ORDERED** and **DECREED** that the Application is **DENIED**. The Complaint is **DISMISSED** in accordance with Rule 240(j) of the Pennsylvania Rules of Civil Procedure.

BOARD OF CLAIMS

ORDER SIGNED

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Jeffrey F. Smith
Chief Administrative Law Judge