

Circuit Court for Howard County
Case Nos.: C-13-CV-20-000636,
C-13-CV-20-000749

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 1047 and 1050

September Term, 2020

AARON B. ROBERTS

v.

DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES

Friedman,
Beachley,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 3, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Aaron B. Roberts, appellant, filed two separate petitions for judicial review in the Circuit Court for Howard County, seeking review of decisions by the Secretary of the Department of Public Safety & Correctional Services (“Department”). In both cases, appellant filed a request for an order waiving prepaid costs, which the court denied. Appellant noted an appeal in both cases, which have been consolidated in this Court. Appellant presents the following two issues for our review:

1. Did the circuit court abuse its discretion in denying [a]ppellant’s request[s] for waiver of prepayment of the filing fees?
2. Does the application of the Prisoner Litigation Act to proceedings arising out of the statutory right to judicial review violate the First and Fourteenth Amendments?

We answer the first question in the negative and affirm. We find it unnecessary to address the second question.

FACTUAL AND PROCEDURAL BACKGROUND

Case 636

On August 24, 2020, appellant, an inmate at Patuxent Institution, filed a petition for judicial review (circuit court case number C-13-CV-20-000636 (“Case 636”). The petition referenced three Inmate Grievance Office¹ case numbers but provided no information about the nature or subject of the claims. Along with the petition, appellant filed a request for waiver of prepaid costs using a court form for waiver of costs pursuant to Maryland Rule

¹ The Inmate Grievance Office is an office within the Department. Md. Code (1999, 2017 Repl. Vol.), § 10-202 of the Correctional Services Article (“CS”).

1-325.² In support of his request for waiver, appellant stated, under oath, that he is incarcerated, indigent, and has no source of income.

On August 26, 2020, the court denied the request in a written order, stating that appellant failed to comply with the requirements of § 5-1002 of the Courts and Judicial Proceedings Article (“CJP”). The court explained:

[CJP] § 5-1002 governs filing fees for prisoners and the waiver of said fees. Pursuant to subsection (c) of § 5-1002, “[a] court may waive payment of the entire required filing fee for a civil action filed by a prisoner only on a written showing under oath by the prisoner that: (1) The prisoner is indigent; (2) The issue presented is of serious concern; (3) Delay in the consideration of the issues presented will prejudice the consideration of the claim; (4) The prisoner is not likely to accumulate sufficient funds to pay the required filing fee within a reasonable period of time; and (5) The prisoner possesses a reasonable likelihood of success on the merits of the claim.” Petitioner did not comply with the requirements of § 5-1002(c).

Appellant was given ten days to supplement his request for waiver or pay the costs.

On September 15, 2020, appellant filed a motion for reconsideration. In addition to reasserting his indigence and inability to pay costs, appellant stated: (1) “this matter presents issues of serious concern,” because it “challenges the preliminary dismissal of an

² In pertinent part, Rule 1-325 provides:

(e)(1)An individual unable by reason of poverty to pay a prepaid cost . . . may file a request for an order waiving the prepayment of the prepaid cost. The request shall be accompanied by (A) the pleading or paper sought to be filed; (B) an affidavit substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks’ offices; and (C) if the individual is represented by an attorney, the attorney’s certification that, to the best of the attorney’s knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

inmate grievance complaint a[s] ‘wholly lacking in merit’ without the required full and fair hearing”; (2) that he would be prejudiced by a delay in consideration of his claims because he was “pending transfer” to another correctional facility, and Department regulations “prohibit an inmate from calling inmate witnesses who are not housed in the [same] institution as the grievant”; and (3) that he possessed “more than a likelihood of success on the merits,” because the decision at issue “is the direct result of a practiced policy of the IGO [Inmate Grievance Office]” that the circuit court had “ruled . . . to be a due process violation” in other cases. On September 21, 2020, the court denied the motion for reconsideration, stating that appellant had “made no new or sufficient statements of fact[.]”

On October 8, 2020, appellant filed a second motion for reconsideration, stating that, although Correctional Services Article § 10-207(b)(1) authorizes the Department to dismiss a complaint without a hearing or specific findings of fact “if the complaint is determined to be wholly lacking in merit on its face,” the Department had dismissed his complaint on grounds that it was “wholly lacking in merit,” which appellant claimed “is an adjudication that can only be determined by the designated fact finder after review and consideration of all established facts through whatever process is guaranteed to the [a]ffected parties.” On October 15, 2020, the court denied the second motion for reconsideration without explanation.

Case 749

On October 8, 2020, appellant filed another petition for judicial review (case number C-13-CV-20-000749 (“Case 749”). The petition listed seven Inmate Grievance

Office case numbers, and referenced an “administrative dismissal dated September 10, 2020,” but provided no other details about the nature of the claims or the reason they were dismissed. Along with the petition, appellant filed a request for waiver of prepaid costs and a signed “declaration,” under oath, that he was indigent and had no source of income from which to pay the required filing fee, and that a delay in consideration would hinder or prevent him from accessing evidence and witnesses in subsequent proceedings.

Appellant further stated that:

the decision of the [Department] is unconstitutional in that it violates the fundamental right to due process, exceeded the statutory authority of the Executive Director of the Inmate Grievance Office (IGO), and therefore is the result of an unlawful procedure. Moreover, this is a “practiced” policy of the IGO which [appellant] successfully challenged on judicial review.

Accordingly, the issues presented are of serious concern to which [appellant] “possesses a reasonable likelihood of success on the merits of the claim.”

The court denied the request for waiver on the ground that appellant’s claim appeared, “on its face, to be frivolous.” The court’s order provided that the petition for judicial review would be considered withdrawn if the costs were not paid within ten days.

Appellant did not proceed in either case, but instead filed these consolidated appeals. Consequently, the administrative records were never forwarded to the trial court, and appellant was not required to file memoranda in support of his petitions. There is nothing else in the record indicating the nature or subject of the decisions from which appellant sought review.

DISCUSSION

With certain exceptions, all plaintiffs, including incarcerated individuals, must pay a required fee before the clerk of the circuit court will docket their case. Md. Code (1973, 2020 Repl. Vol.), Courts and Judicial Proceedings Article (“CJP”), § 7-201(a). An individual who is unable by reason of poverty to pay the required fee may petition the court for an order waiving such “prepaid costs.” Md. Rule 1-325(e)(1). The request must be accompanied by an affidavit, substantially in the form available on the Judiciary website and in the clerks’ offices, which calls for information regarding the party’s income, assets, and liabilities. *Id.* The court is required to grant the requested relief if it finds (1) “that the party is unable by reason of poverty to pay the prepaid cost,” and (2) “that the pleading or paper sought to be filed does not appear, on its face, to be frivolous[.]” Md. Rule 1-325(e)(3); *see also Davis v. Mills*, 129 Md. App. 675, 679 (2000).

The Prisoner Litigation Act, codified at CJP § 5-1001 *et seq.*, was “enacted to deter frivolous litigation by prisoners.” *Massey v. Inmate Grievance Off.*, 153 Md. App. 691, 694 (2003). CJP § 5-1001 requires that inmates who request waiver of prepaid costs in a civil action that “relates to or involves [the inmate’s] conditions of confinement” must comply with the stricter requirements of CJP § 5-1002.³ CJP § 5-1002(c) of the statute authorizes the court to waive prepayment of the required filing fee for a civil action related to conditions of confinement “only on a written showing under oath by the prisoner” that:

³ “‘Conditions of confinement’ means any circumstance, situation or event that involves a prisoner’s custody, transportation, incarceration, or supervision.” CJP § 5-1001(d).

- (1) The prisoner is indigent;
- (2) The issue presented is of serious concern;
- (3) Delay in the consideration of the issues presented will prejudice the consideration of the claim;
- (4) The prisoner is not likely to accumulate sufficient funds to pay the required filing fee within a reasonable period of time; and
- (5) The prisoner possesses a reasonable likelihood of success on the merits of the claim.

Substantial compliance with the five-factor test is insufficient. *Williams v. Cir. Ct. for Wash. Cnty.*, 196 Md. App. 169, 179 (2010) (rejecting substantial compliance argument). Moreover, to demonstrate sufficient cause for waiver of prepaid court costs under CJP § 5-1002(c), a petitioner must do “more than just recit[e] the statutory language.” *Id.* at 178. “It is essential to state the basis of one’s claim with ‘sufficient particularity,’ such that the court can make a determination as to its validity, and the claimant’s likelihood of success on the merits.” *Id.*

We review a trial court’s denial of an inmate’s request for a waiver of prepayment of filing fees under CJP § 5-1002(c) for an abuse of discretion. *Massey*, 153 Md. App. at 697. “An abuse of discretion occurs when ‘the discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons, or when no reasonable person would take the view adopted by the [trial] court.’” *Comptroller of Md. v. Myers*, 251 Md. App. 213, 242 (2021) (alteration in original) (quoting *Wilson-X v. Dep’t of Hum. Res.*, 403 Md. 667, 677 (2008)).

Appellant provided no information, in either Case 636 or Case 749, regarding the basis of the underlying administrative complaints, such that the court could make a determination as to the seriousness of appellant’s concerns or his likelihood of success on the merits. Consequently, we conclude that the court did not abuse its discretion in declining to waive prepaid costs. *See Massey*, 153 Md. App. at 696 (affirming an order denying a motion to waive costs because, among other things, “[Massey] provided no information regarding the basis of his claim that would have permitted the trial court to assess whether Massey had a reasonable likelihood of success on the merits”).

The second issue raised by appellant is that the Prisoner Litigation Act is unconstitutional because it does not include a savings provision, such as the one in the federal statute, which states that “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay” the initial filing fee. 28 U.S.C. § 1915(b)(4). We do not reach that issue because we are satisfied that appellant was not prohibited from seeking judicial review due to his inability to pay costs; he was prohibited from seeking judicial review because he failed to fulfill his statutory obligation under CJP § 5-1002(c). *See, e.g., Motor Vehicle Admin. v. Gonce*, 446 Md. 100, 126 (2016) (“[T]his Court will not decide constitutional issues unnecessarily.”).

**JUDGMENTS OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**