

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH** : **No. 02-11901**  
:   
**vs.** :   
: **Petition for Modification**  
**STEVEN SMITH,** : **Due to Illness pursuant to**  
**Defendant** : **61 P.S. §81**

**OPINION AND ORDER**

The court heard testimony on this Petition on December 21, 2005 and on July 6, 2006. Defendant who is an inmate at the State Correctional Institution in Albion (hereinafter “SCI-Albion”), was the only witness presented at the hearings.

Defendant’s contention is that his sentence should be modified and he should be transferred out of SCI-Albion to a Veteran’s Hospital so he can receive treatment for hepatitis A, B, and C. Defendant testified he suffers from significant viral and fungal infections because his immune system has been devastated by his disease. He testified SCI-Albion recently performed a biopsy of his liver and his liver has category 3 damage. He claims he will need a transplant of his liver sometime in the future. Defendant also complains that the treatment in SCI-Albion is antiquated and that he can get safer and more effective treatment at a VA hospital. Defendant is a Vietnam veteran.

Defendant testified he gets or has gotten interferon injections to treat his problem, but the interferon “knocks” his immune system down. Thus, he claims now he receives no treatment. He testified that he believes treatment with the drug interleukin would be a better course of treatment.

After hearing testimony of December 21, 2005, the Court felt the Defendant did not meet his burden of proof under 61 P.S. §81, but the Court also felt Defendant could

be considered seriously ill. While the Court gave some thought to trying to take testimony from a doctor at Albion, it hesitated to do this because Defendant is antagonistic to prison doctors<sup>1</sup> and he would perceive any such information as biased against him. Thus, the Court continued the case after the December 21, 2005 hearing, to arrange for an independent medical evaluation of Defendant to be performed by Dr. William R. Somers, Medical Director of the Susquehanna Health System, Center for Liver Disease, without any charge to Defendant.

Dr. Somers was going to examine Defendant on or about May 11, 2006. The Court had Defendant specially transported by Lycoming County Sheriff from the State Correctional Institution for this examination.

Unfortunately, this examination never occurred. The letter from Dr. Somers of May 11, 2006, is made part of the record at the hearing of July 6, 2006. The letter, of course, will speak for itself.

Apparently, when Defendant came into the room to see Dr. Somers, Defendant refused to sign a medical release form to allow Dr. Somers to see his medical records. Dr. Somers, in his letter describes his contact with Defendant as a “fiasco”. Dr. Somers had some limited conversation with Defendant, but was not able to examine him.

Defendant, Steven Smith, testified at the hearing on July 6, 2006 that he would not sign a medical release of records for Dr. Somers because he has a lawsuit against the Lycoming County Prison and he felt that Dr. Somers request was a “devious trick” for the prison to obtain his medical records.<sup>2</sup> Therefore, Mr. Smith did not cooperate with Dr.

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1 From the defendant’s testimony, it appears he currently has or has had a lawsuit filed in Federal Court against the Lycoming Count Prison over medical treatment.

2 Mr. Smith’s concern makes little sense because if he has sued the

Somers and the examination did not go forward.

Defendant clearly cannot prevail in his petition. Section 81 requires the defendant to prove that he is seriously ill and that it is “necessary” he be removed from the institution he is in to some other institution where proper treatment may be administered. While perhaps there is proof that Defendant is seriously ill, there is no proof that SCI-Albion cannot appropriately treat or care for him or that there is another institution that could appropriately care for him.

In the recent case of Commonwealth v. Kositi, 880 A.2d 648 ( Pa.Super. 2005), a state inmate filed a Petition to Modify under 61 P.S. §81. Like Defendant, the inmate in Kositi suffered with “the sometime fatal disease, Hepatitis – C”. Id. at 650. The Superior Court in Kositi noted that Act 61 “allows an individual, who is seriously ill and confined in one facility, to request transfer to another facility for the individual to receive proper treatment. Id. at 651.. However, Kositi decision makes it clear that the inmate must show that he is unable to receive proper treatment in the current facility. There is no evidence in this case, other than the defendant’s non expert opinion, that Albion cannot or won’t provide proper medical treatment to him. The Superior Court in Kositi stated:

The mere fact that [the individual] suffers from a ‘serious illness’ is not sufficient to allow relief under [Act 61]. Rather, the requirement of the statute is a ‘serious illness’ **and** a showing that it is ‘necessary’ to leave the prison to receive medical care, either because the inmate’s disease cannot be treated in prison or as a means quarantine.

Id. at 653, quoting Commonwealth v. Dunlavey, 75 A,2d 562 m 564 (Pa,Super. 2002), appeal denied, 572 Pa. 698, 813 A.2d 837 (2002)..

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Lycoming Count Prison, the prison would be able to obtain his medical records through the discovery process in the lawsuit.

Defendant in the instant case has not proven that the SCI-Albion cannot adequately treat him. Likewise, Defendant has not presented any evidence as to another state correctional institution which could more appropriately treat his problem.<sup>3</sup> While Defendant would like to be treated in a Veterans Administration Hospital, Defendant offered no evidence to show such hospital could treat him or would even accept him for treatment. The Court cannot modify Defendant's sentence at this time to probation or house arrest. Such a modification of sentence would be beyond the permissible purview of 61 P.S. §81. See Commonwealth v. Kositi, supra; Commonwealth v. Reefer, 816 A.2d 1136, 1145 (Pa.Super. 2003); (“Section 81 provides the trial court with the limited authority to modify only the place of confinement”).

For these reasons Defendant's Petition must be denied.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of July 2006, Defendant's Petition for Modification of Sentence pursuant to 61 P.S. §81 is **DENIED**.

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<sup>3</sup> The case law makes it clear that the allegation that a facility lacks the resources to treat an inmate must go beyond quality or neglect in treatment and address the inability of the prison facility to provide adequate care

By The Court,

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Kenneth D. Brown, P.J.

cc: Steven Smith, FE 5013  
Albion State Correctional Institution  
10795 Rte18, Albion PA 16475-0001  
Donald Martino, Esquire  
Henry Mitchell, Esquire (ADA)  
Work File  
Gary Weber, Esquire (Lycoming Reporter)

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See Commonwealth Reefer, 816 A.2d 1136, 1145 FN 11 (Pa.Super. 2003)  
Footnote 11 at p. 1145.