

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Justin Michael Credico, et al.,	:	
Appellant	:	
	:	
v.	:	No. 1802 C.D. 2013
	:	Submitted: December 27, 2013
Attorney General of Pennsylvania	:	

OPINION NOT REPORTED

**MEMORANDUM OPINION
PER CURIAM**

FILED: February 11, 2014

Appellant Justin Michael Credico (Credico) *pro se* appeals from an order of the Court of Common Pleas of Chester County (trial court), which dismissed his complaint as frivolous pursuant to Pa. R.C.P. No. 240(j)(1).¹ For the reasons set forth below, we affirm.

On January 25, 2013, Credico filed a complaint in the trial court, presumably seeking to overturn this Commonwealth's prohibition against recreational or medicinal marijuana use.² (Certified Record (C.R.), complaint.) Specifically, Credico cited to the recent changes in Colorado and Washington State with respect to their laws governing recreational marijuana use. On the same day, Credico petitioned the trial court for leave to proceed *in forma pauperis* (IFP).

¹ The Attorney General of Pennsylvania is not participating in this appeal.

² In his complaint, Credico failed to cite to any particular federal or Pennsylvania statute or request any particular relief.

On May 13, 2013, the trial court issued an order, *sua sponte*, dismissing as frivolous Credico's complaint under Pa. R.C.P. No. 240(j)(1), which provides:

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 upon 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.

On June 4, 2013, Credico appealed the trial court's order. Following the filing of Credico's statement of errors complained of on appeal, the trial court issued an opinion in accordance with Pa. R.A.P. 1925(a). In its 1925(a) opinion, the trial court noted that marijuana continues to be a controlled substance under federal and Pennsylvania law, although eighteen states and the District of Columbia have taken steps to decriminalize medicinal and/or recreational marijuana use. Next, the trial court listed a plethora of federal cases upholding the classification of marijuana as a controlled substance. The trial court observed that any changes to laws banning recreational or medicinal use of marijuana must be enacted through the legislative process. Indeed, the trial court noted recent legislative efforts that are afoot in this Commonwealth as well as Congress relating to the legalization, decriminalization, and acceptance of marijuana use. The trial court also noted that Credico's energies would be better spent on garnering support for legislative initiatives relating to the legalization or decriminalization of marijuana. Finally, the trial court noted that, even if recreational marijuana use would be legalized, Credico would not be permitted to purchase the drug—much less afford it—because of his status as a prison inmate.

On appeal,³ Credico essentially argues that the trial court abused its discretion in dismissing his complaint as frivolous.⁴ Specifically, Credico argues that his complaint was not frivolous, because it sought to overturn under the rubric of equal protection the federal and Pennsylvania laws criminalizing recreational or medicinal marijuana use. (Appellant’s Br. at 16.) Credico raises the equal protection challenge under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, section 26 of the Pennsylvania Constitution.

At the outset, we note that an action is frivolous under Pa. R.C.P. No. 240(j)(1) “if, on its face, it does not set forth a valid cause of action.” *Bennett v. Beard*, 919 A.2d 365, 367 (Pa. Cmwlth. 2007) (quoting *McGriff v. Vidovich*, 699 A.2d 797, 799 (Pa. Cmwlth. 1997), *appeal denied*, 553 Pa. 693, 717 A.2d 1030 (1998)). A frivolous action is one that lacks an arguable basis in either law or fact. *Id.*; accord *Neitzke v. Williams*, 490 U.S. 319 (1989). An individual seeking to proceed IFP is responsible for presenting a valid cause of action. *Conover v. Mikosky*, 609 A.2d 558, 560 (Pa. Super. 1992).

³ Our review of a trial court order dismissing an action pursuant to Pa. R.C.P. No. 240(j) is limited to determining whether an appellant’s constitutional rights have been violated and “whether the trial court abused its discretion or committed an error of law.” *McGriff v. Vidovich*, 699 A.2d 797, 798 n. 2 (Pa. Cmwlth. 1997), *appeal denied*, 553 Pa. 693, 717 A.2d 1030 (1998). An abuse of discretion occurs where, “in reaching a conclusion, the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will.” *Appeal of Lynch Cmty. Homes, Inc.*, 522 A.2d 716, 719 n. 4 (Pa. Cmwlth. 1987).

⁴ To the extent Credico raises any due process issues, we decline to address them because he failed to raise them in his concise statement of errors complained of on appeal or develop them in his brief. See Pa. R.A.P. 1925(b)(4)(vii) and 2119. As a result, we consider them waived.

In *Curtis v. Kline*, 542 Pa. 249, 666 A.2d 265 (1995), our Supreme Court described the concept of equal protection under the laws, as follows:

The essence of the constitutional principle of equal protection under the law is that like persons in like circumstances will be treated similarly. However, it does not require that all persons under all circumstances enjoy identical protection under the law. The right to equal protection under the law does not absolutely prohibit the Commonwealth from classifying individuals for the purpose of receiving different treatment . . . and does not require equal treatment of people having different needs. The prohibition against treating people differently under the law does not preclude the Commonwealth from resorting to legislative classifications . . . provided that those classifications are reasonable rather than arbitrary and bear a reasonable relationship to the object of the legislation. In other words, a classification must rest upon some ground of difference which justifies the classification and has a fair and substantial relationship to the object of the legislation.

Curtis, 542 Pa. at 254-55, 666 A.2d 267-68 (citations omitted).

With respect to an equal protection challenge, Pennsylvania courts “are guided by the standards and analysis employed by the United States Supreme Court and have adopted those standards and analysis in interpreting and applying Article I, section 26 of our constitution.” *Commonwealth v. Parker White Metal Co.*, 512 Pa. 74, 83, 515 A.2d 1358, 1363 (1986). In describing the equal protection analytical framework, our Supreme Court recognizes

three different types of classifications calling for three different standards of judicial review. The first type—classifications implicating neither suspect classes nor fundamental rights—will be sustained if it meets a “rational basis” test In the second type of cases, where a suspect classification has been made or a fundamental right has been burdened, another standard of review is applied: that of strict scrutiny Finally, in the third type of cases, if “important,” though not

fundamental rights are affected by the classification, or if “sensitive” classifications have been made, the United States Supreme Court has employed what may be called an intermediate standard of review, or a heightened standard of review

Parker White Metal Co., 512 Pa. at 84, 515 A.2d at 1363 (quoting *James v. Se. Pa. Transp. Auth. (SEPTA)*, 505 Pa. 137, 145, 477 A.2d 1302, 1306 (1984)).

Here, although Credico purports to raise an equal protection claim, he does not specifically identify the statute that he challenges nor does he identify a class of persons that is treated differently under the statute. For purposes of our review, we will consider Credico’s complaint to be challenging the statutory provisions that criminalize the use of marijuana in Pennsylvania. Pennsylvania’s “ban” on marijuana, as characterized by Credico, applies equally to all persons within the Commonwealth. Thus, Credico has not identified, nor can he, *any class of persons* that is being treated differently as to the ban on marijuana use under Pennsylvania law. Because no class is being treated differently, Credico cannot assert an equal protection claim.

Moreover, Credico’s challenge is based on circumstances resulting from a change in the laws of other states. A change in another state’s law, however, cannot render our Commonwealth’s law unconstitutional. The fact that Washington and Colorado have enacted laws on marijuana that differ from the law in Pennsylvania does not implicate equal protection concerns. Equal protection concerns would focus on whether Pennsylvania law distinguishes between classes of persons with regard to marijuana—not whether our law treats individuals differently than laws of other states.

We, therefore, conclude that the trial court did not abuse its discretion in dismissing Credico's complaint as frivolous. Accordingly, we affirm the trial court's order.

