MICHAEL DALEY, ESQUIRE
Attorney I.D. 77212
NICOLE FEIGENBAUM, ESQUIRE
Attorney I.D. 319765
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Phone: (215) 560-6326 Fax: (215) 560-5486

Attorneys for the 38th Judicial District, the Hon. Thomas Del Ricci, and Michael R. Kehs, Esq.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY MCFALLS, *et al.*	:	
	:	
Petitioners	:	
	:	NO. 4 MD 2021
v.	:	
	:	
38th JUDICIAL DISTRICT, *et al.*	:	
	:	
Respondents	:	
	:	

Brief in Support of Respondents the 38th Judicial District, the Honorable Thomas M. Del Ricci, and Michael R. Kehs, Esquire's Preliminary Objections to the Petition for Review

I. Statement of the Case

This class action concerns whether judges imposing a criminal sentence have the discretion to do so, or whether this Court should step in and meddle in not only criminal cases by telling a judge what they can and cannot do in their discretion, but also how a court of common pleas operates. Petitioners alleged that their rights were violated

because a criminal court judge used their discretion in imposing allegedly duplicative court costs against them and other proposed class individuals as part of their criminal convictions and sentences in their criminal cases in the Court of Common Pleas of Montgomery County.

In lieu of attempting to correct alleged errors in the criminal sentences within their criminal cases, Petitioners seek to have this Court change their sentences by making a collateral, civil attack on their sentences. In addition, Petitioners want this Court declare that judges sitting in criminal court erred in imposing those sentences. What is more, they want this Court to tell judges imposing criminal sentences what costs can and cannot be imposed – regardless of the judges' discretion and whether such costs can legally be imposed.

Not yet done, Petitioners believe that this Court should administer how the Court of Common Pleas conducts criminal proceedings and what information it must supply to defendants, despite that such authority lies solely with the Supreme Court of Pennsylvania. On top of all this, Petitioners do not have an active criminal case in which they would be subject to the alleged violations of their rights to begin with.

Objecting Respondents are the 38th Judicial District of Pennsylvania (the Court of Common Pleas of Montgomery County), the Honorable Thomas M. Del Ricci, President Judge of the Court of Common Pleas of Montgomery County, and the Court Administrator for the Court of Common Pleas, Michael R. Kehs, Esquire ("Judicial Respondents").[1] President Judge Del Ricci and Court Administrator Kehs are sued in their official capacities only. Hence, the claims against them are really against the Court of Common Pleas. Judicial Respondents are all entities of the Unified Judicial System of Pennsylvania.[2]

The Court of Common Pleas' alleged impermissible policies and practices.

The sole policy and practice that Petitioners base their claims on is that Judicial Respondents "allow" judges the judicial discretion in individual cases to impose duplicative costs as part of imposing a sentence. (Petition for Review ¶ 36.) There are no allegations that

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[1] The Clerk of Courts for Montgomery County is also a respondent and represented by separate counsel.

[2] A suit against an individual in his official capacity is actually against the entity he is a part of. *See Flagg v. International Union*, 146 A.3d 300, 306 (Pa. Cmwlth. 2016); *Hafer v. Melo*, 502 U.S. 21, 26 (1991).

Judicial Respondents are otherwise engaged in a policy, practice, or arbitrary assessment of duplicative court costs in criminal cases. The Petition contains no allegations that costs are imposed outside of a sentencing judge's discretion, such as administratively or on top of costs a judge imposes.

Petitioners' request for relief asks this Court to invalidate the discretion of sentencing judges to determine whether a case involves more than one criminal episode, and whether duplicative costs are permitted on a case-by-case basis. (Petition for Review ¶ 102, Wherefore Clause.)

Petitioners' underlying proceedings.

Petitioner Amy McFalls' claims arise from her criminal case docketed at CP-46-CR-2346-2018.[3] She was found guilty of more than one offense on September 18, 2019, and was subsequently sentenced. According to her criminal docket, she appealed to Superior Court, and

[3] In the interest of brevity, links to each Petitioners' docket are provided as opposed to attaching the dockets. Petitioner McFalls case is at https://ujsportal.pacourts.us/Report/CpDocketSheet?docketNumber=CP-46-CR-0002346-2018&dnh=79ZKaQ9F6X3vcXybXSaxYw%3D%3D (last accessed April 9, 2021).

her appeal was decided on February 25, 2020. There is no indication that her case is ongoing.

Petitioner Jason Crunetti's claims arise from his criminal case docketed at CP-46-CR-2332-2019. He entered a guilty plea to more than one offense on July 11, 2019, and was subsequently sentenced. There is no indication on the docket that Petitioner appealed his sentence or that his case is ongoing.[4]

Petitioner Vincent Esposito's claims arise from his criminal case docketed at CP-46-CR-2750-2018. He entered a guilty plea to more than one offense on October 17, 2019, and was subsequently sentenced. According to his criminal docket, he filed post-sentence motions, and his motions were decided on February 3, 2020. There is no indication that his case is ongoing.[5]

Petitioner Gregory Jackson's claims arise from his criminal case docketed at CP-46-CR-3593-2019. He entered a guilty plea to more than

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[4] https://ujsportal.pacourts.us/Report/CpDocketSheet?docketNumber=CP-46-CR-0002332-2019&dnh=PRLwMAb9M59KexiBEwyQyA%3D%3D (last accessed April 9, 2021).

[5] https://ujsportal.pacourts.us/Report/CpDocketSheet?docketNumber=CP-46-CR-0002750-2018&dnh=JHiRThd7PS2jh2sCh2szRw%3D%3D

one offense on December 5, 2019, and was subsequently sentenced. There is no indication on the docket that Petitioner appealed his sentence or that his case is ongoing.[6]

Petitioner Brenda Lacey's claims arise from her criminal case docketed at CP-46-CR-3398-2017. She entered a guilty plea to more than one offense on June 20, 2019, and was subsequently sentenced. While it does not appear that Petitioner appealed her sentence, according to the criminal docket there was a subsequent Motion for Modification of Sentence Nunc Pro Tunc, which was denied. There is no indication that her case is ongoing.[7]

Proposed class action.

Petitioners bring this suit not only on their own behalf, but those persons who "have been, or will be, subjected to the imposition and

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[6] https://ujsportal.pacourts.us/Report/CpDocketSheet?docketNumber=CP-46-CR-0003593-2019&dnh=F7WOXKG%2B0ejMWLnGsVQg7w%3D%3D (last accessed April 9, 2021).

[7] https://ujsportal.pacourts.us/Report/CpDocketSheet?docketNumber=CP-46-CR-0003398-2017&dnh=zm2kXWQb9jVL%2FFPqE7zy3g%3D%3D (last accessed April 9, 2021).

collection of unconstitutional and unauthorized duplicative costs in criminal cases[.]" (Petition for Review ¶¶ 14, 89.)

Petitioners' requested relief.

Petitioners claim that Judicial Respondents violated various federal and state constitutional rights by docketing and assessing duplicative court costs arising from criminal convictions, and seek the following declaratory and injunctive relief:

a. a declaration that imposing costs on multiple charges in a single criminal proceeding is unlawful, and such costs against Petitioners are null and void;

b. a declaration that a court cannot impose costs on a criminal defendant unless it provides a bill of costs to defendant and counsel at sentencing;

c. injunctive relief to include ceasing the imposition and collection of such costs, including voiding outstanding balances;

d. an injunction ordering Judicial Respondents to develop various programs for the itemization and production of any court costs prior to sentencing; and

e. an injunction ordering Judicial Respondents to notify credit reporting agencies of adjustments to credit reports of the proposed class.

(Petition for Review, Wherefore Clause.)

Specifically, they allege that Judicial Respondents violated the equal protection and procedural due process clauses of the United States and Pennsylvania constitutions, as well as acted *ultra vires* in the "imposition and collection" of duplicative costs.

II. Statement of Questions Involved

1. Do Petitioners lack standing related to how the Court of Common Pleas operates going forward because they have already been sentenced and do not have any active criminal case in the Court of Common Pleas and, therefore, do not have an immediate, concrete interest in how criminal sentences are imposed ?

Answer: Yes.

2. Does this Court lack jurisdiction to entertain the requested relief against Respondents related to how sentences are imposed and what information is provided to defendants at sentencing, because only the Supreme Court has authority to administer the Court of Common Pleas?

Answer: Yes.

3. Is the Petition an impermissible collateral attack on Petitioners' criminal cases because they seek to invalidate or modify the sentence in their underlying criminal proceedings in this civil action?

Answer: Yes.

4. Is discretionary injunctive and equitable relief improper where Petitioners have adequate and available remedies at law in their criminal case?

Answer: Yes.

5. Does the Petition fail to state an equal protection claim, a due process claim, and that Judicial Respondents are acting *ultra vires* in the imposition of court costs?

Answer: Yes.

6. Are Judicial Respondents, which are Commonwealth entities and officials, entitled to sovereign immunity for all claims seeking to compel affirmative action by Judicial Respondents?

Answer: Yes.

7. Do Petitioners fail to allege sufficient facts to bring a class action because no common question of fact exists when sentence and costs are imposed in each unique criminal case, which involves an examination of those individual cases and distinct circumstances?

Answer: Yes.

III. Argument

A. Petitioners lack standing to challenge how the Court of Common Pleas operates criminal court and its sentencing procedures going forward.

Petitioners seek relief pertaining to how the Court of Common Pleas administers criminal court and imposes sentences going forward. But Petitioners have no active criminal matters in the Court of Common Pleas. Their criminal proceedings have concluded, and they have no pending appeals. They do not allege that a reasonable likelihood exists that they will again be charged, convicted, and sentenced in Montgomery County. Petitioners assert no other association or interest in how the Court of Common Pleas logistically carries out sentencing moving forward, other than a generalized interest that anyone could assert. In sum, they lack standing.

It is well known that judicial intervention, including declaratory and injunctive relief, is appropriate only where the controversy is "real and concrete, rather than abstract." *City of Phila. v. Commonwealth*, 838 A.2d 566, 559 (Pa. 2003). Without an actual imminent or inevitable controversy, a party lacks standing to maintain a declaratory judgement action. *Silo v. Ridge*, 728 A.2d 394, 398 (Pa. Cmwlth. 1999).

Thus, a party must have a substantial, direct, and immediate interest in the litigation's outcome to have standing. *Society Hill Civic Assoc. v. Pennsylvania Gaming Control Bd.*, 928 A.2d 175, 184 (Pa. 2007). An interest is substantial only if it surpasses the common interest of all citizens in procuring obedience to the law, is direct only if the matter complained of caused harm to the party, and is immediate only if it is not remote or speculative. *Id.* (citations omitted). None is present here.

Petitioners seek to enjoin the imposition or collection of duplicative costs going forward and to require the Court of Common Pleas to implement a program regarding costs and notice. (Petition for Review ¶¶ 102, Wherefore Clause.) They also want a declaration that

the Court of Common Pleas cannot impose costs unless it provides a timely bill of costs. (Petition for Review, Wherefore Clause.)

Unfortunately for Petitioners, they have no substantial, direct interest for standing purposes in how the Court of Common Pleas operates, how fines and costs are imposed at sentencing, or what information is provided. They have no active criminal cases, and there is no allegation that they will have future criminal proceedings in the Court of Common Pleas. Thus, they cannot be injured by how the Court of Common Pleas operates. *See Dillon v. City of Erie*, 83 A.3d 467, 475 (Pa. Cmwlth. 2014)(holding that injunctive relief is not available to eliminate a possible "remote future injury or invasion of rights."); *Donahue v. Superior Court of Pa.*, 2019 WL 913812, at *3 (M.D. Pa. 2019)(no standing where plaintiff did not "plausibly allege" that he might be prosecuted under the same criminal statute again).

At bottom, their interest in "procuring obedience to the law" is no different from the public's interest. Petitioners allege no direct, immediate, or future harm stemming from the Court of Common Pleas' imposition of court costs or billing procedures – because they do not have any.

Class action standing.

In order to bring a class action, a plaintiff must have their own standing. Here, because Petitioners do not have individual standing, they cannot maintain a class action. *Nye v. Erie Ins. Exch.*, 470 A.2d 98, 100 (Pa. 1983); *Citizens for State Hosp. v. Commonwealth*, 553 A.2d 496, 498 (Pa. Cmwlth. 1989)(holding that if named plaintiffs do not have standing, they cannot maintain a class action), *aff'd,* 600 A.2d 949 (Pa. 1992).

B. This Court does not have jurisdiction over Petitioners' claims concerning sentencing procedures and what information the Court of Common Pleas must provide at sentencing: only the Supreme Court of Pennsylvania can exercise such supervisory authority over the administration of the Court of Common Pleas.

Petitioners' requested relief related to how the Court of Common Pleas operates, including what must be provided before and at sentencing, pertains directly to the Court of Common Pleas' administration. Yet this Court does not have jurisdiction or authority to direct the Court of Common Pleas how to administer sentencing and what information must be provided. Only the Supreme Court and President Judge have supervisory and administrative authority over

the Court of Common Pleas' administrative operations. Allowing this suit to proceed any further in this Court would interfere with that authority.

The Supreme Court is vested with the Commonwealth's supreme judicial power. Pa. Const. Art. V, § 2. Section 10(a) of Article V provides that the Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace. *See Municipal Publications, Inc. v. Court of Common Pleas of Phila. Co.*, 489 A.2d 1286, 1288 (Pa. 1985); *Guarrasi v. Scott*, 25 A.3d 394, 407 (Pa. Cmwlth. 2011); *see also* 42 Pa.C.S.A. §§ 1701, 1722.

Accordingly, this Court cannot interfere with a court's operations or override a president judge's administrative decisions: only the Supreme Court can. *See In re Petition of Blake*, 593 A.2d 1267, 1269-70 (Pa. 1991)(holding that the Supreme Court has the power to administer and supervise the courts, which includes the duties of a president judge, under its general supervisory powers).

In *Guarrasi*, this Honorable Court dealt with a similar challenge to the operation of a court of common pleas. The plaintiff wanted this Court to declare that the signing of judicial orders by non-judicial

personnel in a court of common pleas was unconstitutional. The plaintiff also asked the court to remove the president judge as the common pleas court's Right to Know Law appeals officer. This Honorable Court correctly held that it did not have jurisdiction over the claims as only the Supreme Court can exercise such supervisory power. *Guarrasi*, 25 A.3d at 407-08.

The Supreme Court highlighted its sole administrative authority in *Municipal Publications, Inc.* There, the Superior Court prevented a common pleas judge from presiding over a matter and directed the president judge to appoint a judge from another county. The Supreme Court held that the Superior Court was without jurisdiction to intercede in matters that are not before the appellate court in its appellate jurisdiction. *Municipal Publications, Inc.,* 489 A.2d at 1288; *see also Leiber v. County of Allegheny*, 654 A.2d 11, 14 (Pa. Cmwlth. 1994)(holding that the court of common pleas did not have jurisdiction to compel a magisterial district judge to pay for a constable's services).

Petitioners ask this Court to compel the Court of Common Pleas to implement new policies and practices in the administration of criminal proceedings. To grant Petitioners' requested relief would mean that the

Commonwealth Court could control how court business was conducted – notwithstanding statutory law and court rules rooting such decisions with the president judge and, ultimately, the Supreme Court. For this Court to take jurisdiction would be a direct affront to the Supreme Court's exclusive supervisory powers.[8] Thus, jurisdiction related to Petitioners' administrative relief is lacking.

C. Petitioners make an improper collateral attack on their criminal sentences by seeking to have this court declare costs null and void and otherwise interfere with what occurred in the criminal cases.

Petitioners bring this civil action to challenge the outcome of their criminal cases. Indeed, they want all costs on their particular cases and those of the proposed class declared "null and void" and to have this Court "adjust" their unpaid balances. Yet, this case is not an appeal from those sentences or a request to the Court of Common Pleas within

[8] For instance, if the Court were to enter a judicial order directing the Court of Common Pleas to take certain administrative action, it would create the odd situation where any action the Supreme Court took in its supervisory powers could conceivably conflict with that order. Thus, the Supreme Court would have to exercise extraordinary jurisdiction sua sponte to vacate the order to perform its constitutionally authorized powers. This is one reason why courts other than the Supreme Court cannot interfere with another court's operations.

their criminal case. Instead, it is an impermissible collateral attack on the criminal sentences.

This Court holds that a criminal defendant may not collaterally attack a conviction or sentence in civil court. *See Guarrasi,* 25 A.3d at 402 (stating that the Post-Conviction Relief Act is the "sole means" to obtain collateral relief); *Keller v. Kinsley*, 609 A.2d 567, 568-69 (Pa. Super. 1992). The civil and criminal courts are "arenas for vindicating disparate rights" that allow "resolution of distinct complaints not reviewable by the other." *Commonwealth v. Pozza*, 750 A.2d 889, 894 (Pa. Super. 2000). "The corridors of justice lead to different forums depending upon the claim sought to be resolved." *Id.*

The Superior Court examined a similar claim in *Keller*. There, the plaintiff brought a civil action contending that he was unjustly convicted in criminal court. The court held that the action was frivolous: a litigant cannot collaterally attack a conviction in a civil proceeding. *Keller*, 609 A.2d at 568-69.

The *Guarrasi* and *Keller* cases foreclose Petitioners' claims. This Court does not have the ability to alter the orders entered in

Petitioners' criminal case. Instead, Petitioners must seek relief within their criminal cases.

Petitioners mistakenly rely on the Supreme Court's ruling in *Commonwealth v. Giaccio*, 202 A.2d 55 (Pa. 1964), to justify their attempt to vacate their court costs through this civil action rather than in their criminal cases. But *Giaccio* did not address whether a defendant may challenge costs imposed at sentencing in a collateral civil action, though. That was not at issue. Indeed, not only wasn't there a civil action started, but "the Commonwealth appealed to the Superior Court" from the trial court's order in the criminal case. *Id*. at 57.[9]

Fortunately, the Court in the instant case does not have to try to shoehorn the facts into *Giaccio*, which involved different statutes from almost 60 years ago. Instead, the Superior Court's relatively recent decision in *Commonwealth v. Garzone,* lights the way: challenging the

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[9] Petitioners may be misplacing their argument on the Court's description of court costs as "an incident of the judgment" rather than part of a criminal sentence. *Giaccio*, 202 A.2d at 143. But the Court was merely explaining the vehicle in which costs are imposed: costs are not part of the penalty enumerated within statutory offenses, but rather are imposed by way of various Acts permitting such costs when applicable to defendants' convicted offenses. Nowhere did the Court address whether a defendant may bring a civil action to claim that a sentencing judge imposed alleged illegal costs.

propriety of costs constitutes "a legality of sentencing claim." 993 A.2d 306, 316 (Pa. Super. 2010)(appellant challenged the authority of the trial court to impose as costs salaries of district attorneys and grand jury costs) *aff'd*, 34 A.3d 67 (Pa. 2012); *see also Commonwealth v. Gary-Ravenell*, 2020 WL 6257159, *8-9 (unpublished)(Pa. Super. 2020)(recognizing divergent lines of decisions on whether costs pertain to a sentence's legality). And a legality of sentence claim must be done through proper appellate procedure in the criminal case.

In a similar vein, a plaintiff cannot use Section 1983 to attack the validity of criminal convictions and sentences. In *Heck v. Humphrey*, 512 U.S. 477 (1994), the United States Supreme Court held that if success in a civil suit would necessarily imply the invalidity of a conviction or sentence, the plaintiff cannot bring suit until the conviction or sentence "has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal . . . or called into question by a federal court's issuance of a writ of habeas corpus." 512 U.S. at 487; *see also Weaver v. Franklin Co.*, 918 A.2d 194, 202 (Pa. Cmwlth. 2007)(applying *Heck* to bar a Section 1983 challenge to a conviction), *allocator denied*, 918 A.2d 198 (Pa. 2007).

Here, a judgment in Petitioners' favor would necessarily imply their (and the proposed classes) sentences' validity in the underlying criminal matters. And Petitioners have not alleged that their sentences were reversed or invalidated.

To grant Petitioners' relief would open the floodgates to criminal defendants coming into civil court to claim that their sentence – confinement duration, length of probation, amount of restitution, costs, and so on – was somehow improper. This is why this Court, the Superior Court, and the United States Supreme Court do not allow criminal defendants to try anew in a different arena. There is already a forum for a defendant to challenge aspects of their sentence and what happened in their criminal case: their criminal case.

D. Declaratory and injunctive relief are not appropriate here because Petitioners have an adequate remedy at law and a more appropriate forum to address costs: their criminal cases.

As noted above, Petitioners and the proposed class members have an adequate remedy at law to challenge their criminal costs – their criminal case. Equity and injunction requests are not appropriate where an adequate remedy is available elsewhere. Petitioners have another avenue to address the issue of duplicative costs: within their underlying

criminal cases at the Court of Common Pleas and, if necessary, on appeal.

This Court holds that an action for declaratory relief is not an "optional substitute for established or available remedies," which is why it "should not be granted where a more appropriate remedy is available." *Aboud v. City of Pittsburgh*, 17 A.3d 455, 466 (Pa. Cmwlth. 2011), *allocator denied*, 17 A.3d 455 (Pa. 2012). Thus, where a plaintiff has a "more appropriate remedy," a court should decline to exercise its discretion. *Bronson v. Office of Chief Counsel*, 2009 WL 9101455, at *2 (Pa. Cmwlth. 2009)(holding that declaratory relief was not appropriate where an inmate sought declaratory relief that correctional facility employees unlawfully withheld a check – the inmate had the more appropriate remedy of a tort action).

Similarly, a court may not grant injunctive relief where an adequate remedy exists at law. *Buehl v. Beard*, 54 A.3d 412, 419-20 (Pa. Cmwlth. 2012), *aff'd*, 91 A.3d 100 (Pa. 2014). Petitioners' ability to address these issues in their criminal case – either directly at sentencing, on appeal, or through the Post-Conviction Relief Act – means that they have an adequate remedy at law. *See Nagle v.*

Pennsylvania Insurance Dep't, 406 A.2d 1229, 1237 (Pa. Cmwlth. 1979)(holding that an adequate remedy at law existed where there was a separate case pending in the Commonwealth Court that "purports to address the very issues" at issue in the case at bar), *rev'd in part on other grounds*, 452 A.2d 230 (Pa. 1982).

Petitioners have both a more appropriate and adequate remedy: a defendant may challenge the legality of their sentence in their criminal case by raising issues related to costs and fines. As the Superior Court holds:

> [i]nitially, we note that, inasmuch as Appellant's argument is premised upon a claim that ***the trial court did not have the authority to impose the costs at*** issue***, Appellant has presented a legality of sentencing claim.*** *See In the Interest of M.W.,* 555 Pa. 505, 725 A.2d 729 (1999) (holding claim the trial court did not have the statutory authority to impose restitution presents legality of sentencing claim, whereas claim restitution amount is excessive presents discretionary aspect of sentencing claim).

Garzone, 993 A.2d at 316 (emphasis added).

The "general rule" is that outside of "rare cases," equitable relief is not appropriate in criminal matters. *Marcus v. Diulus*, 363 A.2d 1205, 1210 (Pa. Super. 1976)(holding that declaratory and injunctive relief were not available related to a search and seizure of property where the

plaintiff could move for a return of property under the rules of criminal procedure).

All in all, no reasons exists here for this Court to exercise its discretionary equitable jurisdiction. Petitioners and proposed class members can raise their arguments in their criminal cases, which – as described above – is a more appropriate forum for claims related to criminal cases.

E. Petitioners fail to state cognizable claims.

1. Petitioners have failed to set forth an equal protection claim.

The essence of the constitutional principle of equal protection under the law is that similarly situated persons will be treated similarly. *See Laudenberger v. Port Authority of Allegheny Co.,* 436 A.2d 147, 155 (Pa. 1981). Petitioners' have failed to establish any facts that they were treated differently than others or otherwise discriminated against.[10]

[10] The equal protection provision of the Pennsylvania Constitution are analyzed under the same standards used by the United States Supreme Court when reviewing equal protection claims under the Fourteenth Amendment. *Fouse v. Saratoga Partners, L.P.*, 204 A.3d 1028, 1034 (Pa. Cmwlth. 2019).

Petitioners cannot state an equal protection claim based on a protected class: they do not make such an allegation. Instead, they have to establish a "class of one" claim, which requires a showing that they have been intentionally treated differently from others similarly situated without a rational basis. *See Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Phillips v. County of Alleghany*, 515 F.3d 224, 243 (3d Cir. 2008). They have not, however.

The first downfall for Petitioners' claim is that they fail to establish that similarly situated defendants were treated differently, which isn't surprising given that sentencing and costs are individual to each particular case. Criminal defendants are sentenced and costs are imposed by different judges for individual criminal cases involving different statutes, which may contain unique cost provisions.

In order to show that they were similarly situated, Petitioners have to allege that defendants who did not have the same costs imposed were convicted of the same crimes, that those crimes were either from the same criminal episode or a different criminal episode, that the other defendants either negotiated costs or not, among other factors.[11]

[11] As noted, some statutes arguably allow for multiple costs.

Even more damming, Judicial Respondents have no role in the determination of which defendants are allegedly assessed duplicative costs. As pled, costs are imposed within a judge's discretion – Judicial Respondents simply "allow" judges to exercise their discretion. In other words, costs are assessed by trial judges based on the circumstances of the cases before them.

At bottom, Petitioners have not established that similarly situated criminal defendants were treated differently without a rational basis.

2. Petitioners fail to state a claim against Judicial Respondents for violation of their due process rights: they had a meaningful opportunity to be heard in their criminal cases and address their sentences and costs.

Petitioners' procedural due process claims fail for the simple reason that they had ample opportunity to be heard in their criminal cases. Petitioners assert that their due process rights were violated because they did not have adequate notice of costs imposed before they were sentenced. Of course, a defendant is free in court to inquire into what sentence, fines, costs, and restitution will or may be imposed prior to pleading guilty. And after sentencing, if they believe that an improper or illegal sentence was entered, they may seek redress within

their criminal case. Hence, a meaningful opportunity to be heard was and is present.

The well-known standard for a Fourteenth Amendment procedural due process claim requires Petitioners to show that: 1) they was deprived of an interest that the Fourteenth Amendment encompasses; and 2) the procedural safeguards surrounding the deprivation were inadequate. *Hill v. Borough of Kutztown*, 455 F.3d 225, 234 (3d Cir. 2006). Due process' fundamental requirement is an opportunity to be heard "at a meaningful time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976).[12]

Due process neither is a guarantee against incorrect or ill-advised decisions nor is it violated because a state violates its own procedures or law. *Rivera v. Illinois*, 556 U.S. 148, 158 (2009). Due process is flexible. It is not a fixed concept that is unrelated to time, place, and circumstances. *Biliski v. Red Clay Sch. Dist.*, 574 F.3d 214, 220 (3d Cir. 2009). In addition, a due process violation is not complete when the

[12] The due process provisions of the United States and Pennsylvania constitutions are generally treated as coextensive. *See Kovler v. Bureau of Admin. Adjudication*, 6 A.3d 1060, 1062 n.2 (Pa. Cmwlth. 2010); *see also Commonwealth v. Sims*, 919 A.2d 931, 943 n.6 (Pa. 2007).

deprivation occurs, but only when the state does not provide due process. *Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000).

Particularly relevant to the instant case, a plaintiff must have taken advantage of the processes that were available to state a due process claim, unless those processes are unavailable or patently inadequate. *Id.* Thus, there cannot be a due process violation if one chooses another course of action as opposed to available process. *Id.*

Here, a defendant has multiple opportunities to be heard. They may inquire about costs prior to pleading guilty. They may inquire about costs immediate after pleading guilty and sentencing while still in court. If they do not and find out about costs after leaving court, they can return to court, file a motion, or both. What is more, they can seek relief on appeal. Petitioners – all represented by counsel – had all these opportunities. Thus, they had meaningful opportunities to be heard.

3. Petitioners have failed to set forth a claim that Judicial Respondents are acting *ultra vires*.

Petitioners assert that the Judicial Respondents are acting *ultra vires* by allowing trial judges the discretion to impose "illegal" duplicative court costs. Setting aside whether the trial judges have imposed alleged illegal costs – an issue properly left for the criminal

courts – Judicial Respondents' alleged "policy" is not unauthorized. Indeed, if allowing trial judges the discretion to impose a sentence were somehow unauthorized, every judicial district in the Commonwealth would be acting *ultra vires*.[13]

As is done throughout the Commonwealth, trial court judges are empowered to oversee the criminal cases to which they are assigned, including accepting guilty pleas (negotiated or open) and imposing all aspects of a defendant's sentence. The Court of Common Pleas and Court Administration do not have authority to deviate from a trial judge's sentence, direct a judge not to impose a particular sentence, or otherwise interfere with a trail judge's authority over an assigned case.

Under Petitioners' theory, every judicial district has to ensure in every case that judges are imposing only correct, legal sentences. Judicial Respondents wholeheartedly agree that judicial officers should impose sentences or make rulings that comport with current law, but

[13] It is not clear that *ultra vires* is an applicable cause of action here and, if it is, that Petitioners have stated a claim for it. Petitioners do not cite any authority that Judicial Respondents purportedly violated in allowing trial judges to exercise their discretion in presiding over criminal cases.

allowing judicial officers to be judicial officers and exercise the discretion that comes with that is hardly unauthorized or illegal.

More to the point, the Petition contains no allegations that Judicial Respondents have a policy or practice wherein they arbitrarily or otherwise impose duplicative costs – because there isn't any. To the contrary, Petitioners acknowledge that the alleged duplicative court costs are assessed based solely on sentencing determinations – discretionary, judicial determinations – made by the presiding judge. That is it. And it is not enough.

F. Judicial Respondents are entitled to sovereign immunity for the affirmative actions that Petitioners want this Court to order the Court of Common Pleas to implement.

Petitioners seek to compel Judicial Respondents to take affirmative actions in adjusting balances, creating a new policy on how costs are presented to defendants, and contacting credit reporting agencies. Setting aside that Petitioners do not have standing, that this court does not have jurisdiction to run the Court of Common Pleas, and that Petitioners cannot state a claim for such relief, they also run headlong into another barrier: sovereign immunity precludes such affirmative actions.

Under Pennsylvania law, the "Commonwealth and its officials and employees acting within the scope of their duties" are entitled to sovereign immunity. 1 Pa.C.S.A. § 2310. Section 2310 covers both official and individual capacity claims. *Maute v. Frank*, 657 A.2d 985, 986 (Pa. Super. 1995); *see also Wheeler v. Delbalso*, 2015 WL 6829233, at *5 (Pa. Cmwlth. 2015)(unpublished)(affirming the dismissal of individual capacity claims under Section 2310).

This immunity protects against not only negligent acts, but intentional conduct, too. *Holt v. Northwest Pa. Training Partnership Consortium*, *Inc.*, 694 A.2d 1134, 1140 (Pa. Cmwlth. 1994). Section 2310 encompasses allegations of crime, fraud, malice, or willful misconduct. *Yakowicz v. McDermott*, 548 A.2d 1330, 1334 (Pa. Cmwlth. 1988). Section 2310 applies to the Court of Common Pleas because it is a state entity. *See* Pa. Const. Art. V, §§ 1, 5; 42 Pa.C.S.A. § 102 ("Commonwealth government" includes the "courts"); 42 Pa.C.S.A. § 301(4)(stating that the courts of common pleas are part of the Unified Judicial System); *see also Russo v. Allegheny Co.*, 125 A.3d 113, 116-17 (Pa. Cmwlth. 2015)(holding that courts of common pleas are state entities), *aff'd*, 150 A.3d 16 (Pa. 2016).

Judge Del Ricci and Court Administrator Kehs – who are state officials – are also entitled to this immunity. *See In re Administrative Order No. 1-MD-2003*, 882 A.2d 1049, 1053 (Pa. Cmwlth. 2005)(a judge is either the Commonwealth itself or a Commonwealth officer), *aff'd*, 936 A.2d 1 (Pa. 2007).[14]

Limited exceptions to Section 2310 immunity exist in 42 Pa.C.S.A. § 8522, but this Court holds that Pennsylvania's courts are not "Commonwealth parties" under Section 8522(b). *Russo,* 125 A.3d at 118 Accordingly, Section 8522's exceptions do not apply.

Further, that Petitioners seek declaratory and injunctive relief does not get around this immunity. That is because Section 2310 immunity applies to suits that seek not only monetary damages from the Commonwealth, but also those that "seek to compel affirmative action on the part of state officials." *Stackhouse v. Pennsylvania*, 892 A.2d 54, 59 (Pa. Cmwlth. 2006)(quoting *Fawber v. Cohen*, 532 A.2d 429 (Pa. 1987)), *allocatur denied*, 903 A.2d 539 (Pa. 2006).

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[14] The term "Commonwealth government" includes "the courts and other officers or agencies of the unified judicial system." 42 Pa.C.S.A. § 102. County-level court administrators are state judicial personnel. 42 Pa.C.S.A. § 1905(a).

And that is what Petitioners want here – to compel Judicial Respondents to take affirmative action to implement new or different policies and procedures within criminal court proceedings. *See id.* (holding that sovereign immunity precluded claim that the state police implement guidelines and policies); *see also Chiro-Med Review Co. v. Bureau of Workers' Compensation*, 908 A.2d 980 (Pa. Cmwlth. 2006)(holding that sovereign immunity barred relief to compel action).

In sum, sovereign immunity precludes Petitioners' claims for affirmative actions against Judicial Respondents.[15]

[15] As noted above, the Supreme Court has administrative authority over the Court of Common Pleas. Thus, while Judicial Respondents have immunity from the affirmative acts that Petitioners seek, the Supreme Court may exercise its general supervisory powers if necessary to address any alleged deficiencies or to improve a court's operations. Should Petitioners believe that such intervention is necessary, they can seek relief in that Court.

IV. Conclusion

Based on the above, Judicial Respondents respectfully request this Honorable Court to grant their Preliminary Objections and dismiss the Petition for Review with prejudice. Given the legal defenses, it would be futile to allow Petitioners leave to amend. *See Weaver v. Franklin Co.,* 918 A.2d 194, 203 (Pa. Cmwlth. 2007).

Respectfully submitted,

s/Michael Daley, Esquire
Michael Daley, Esquire
Nicole Feigenbaum, Esquire

ATTORNEYS FOR JUDICIAL RESPONDENTS

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

MICHAEL DALEY, ESQUIRE
Attorney I.D. 77212
NICOLE FEIGENBAUM, ESQUIRE
Attorney I.D. 319765
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Phone 215.560.6326 Fax 215.560.5486

Attorneys for the 38th Judicial District, the Hon. Thomas Del Ricci, and Michael R. Kehs, Esq.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY McFALLS, *et al.*	:	
	:	
Petitioners	:	
	:	4 MD 2021
v.	:	
	:	
38th JUDICIAL DISTRICT, et al.	:	
	:	
Respondents	:	
	:	

Certificate of Service

The undersigned certifies that on *April 9, 2021,* he caused the foregoing *Brief* to be served on counsel of record via PACfile.

/s/ Michael Daley
Michael Daley, Esquire

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.