

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2001-CA-002313-MR

WILLARD D. ADAMS

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE PAUL W. ROSENBLUM, JUDGE  
ACTION NO. 01-CI-00253

COMMONWEALTH OF KENTUCKY,  
DEPARTMENT OF CORRECTIONS,  
WILLIAM C. SEABOLD, WARDEN;  
THOMAS D. MUGAVIN, DEPUTY WARDEN/  
PROGRAMS; AND PAMELA BOYLES, FORMER  
CASE TREATMENT OFFICER

APPELLEES

OPINION

VACATING AND REMANDING

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BEFORE: COMBS, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE. Willard Adams, an inmate at the Kentucky State Reformatory, appeals pro se from an order of the Oldham Circuit Court denying his petition for declaratory judgment wherein he sought relief from an alleged arbitrary denial of meritorious good time at that institution. We vacate and remand.

On April 24, 2001, Appellant filed a petition for declaratory judgment seeking a continuation of previously earned awards of meritorious good time credits. In Appellant's petition, he asserted that he was an inmate at the Kentucky State Reformatory serving an aggregated fifteen year sentence for the following felony offenses: four counts of sexual abuse in the first degree and one count of trafficking in the second degree.

Appellant began serving his sentence on December 13, 1993, and earned meritorious good time awards in years 1995, 1996, 1997, 1998 and 1999. At some point, Appellant's doctors determined that Appellant was unable to perform work-related or program-related functions due to a number of medical conditions.

On March 1, 2001, Appellant's assigned caseworker informed Appellant that she would no longer be submitting his name for meritorious good time because he was not participating in any programs within the institution. Appellant sent a letter to the warden and requested intervention because he felt he was being discriminated against as a handicapped person. Thomas Mugavin, the Deputy Warden, responded to Appellant's letter. Mugavin informed Appellant that he would not be considered for a meritorious good time award because he was not participating in any programs. Mugavin further noted that Appellant had declined to participate in the sex offender treatment program, for which

he would have been able to receive meritorious good time, because he was in poor physical health and had difficulty with his eyesight.

Based on the events preceding his declaratory judgment action, Appellant believes he has been discriminated against as a handicapped person. Moreover, Appellant feels he has a constitutionally protected liberty interest in continuing to receive meritorious good time awards.

The Commonwealth of Kentucky Department of Corrections (Appellee) filed a motion to dismiss Appellant's declaratory judgment pursuant to CR 12.02(f) for failure to state a claim upon which relief could be granted. In support, Appellee argued that the decision to award meritorious good time is entirely discretionary, and inmates possess no entitlement to the awards. Moreover, Appellant chose not to participate in the sex offender treatment program. In addition, Appellant failed to demonstrate that he did anything exceptional to meet the statutory requirements set out in KRS 197.045(3) to achieve eligibility for meritorious good time awards; but, even if he had, it is within the discretion of Appellee to deny an award of meritorious good time for any reason.

The trial court granted Appellee's motion to dismiss Appellant's declaratory judgment action based on Anderson v. Parker, Ky. App., 964 S.W.2d 809 (1997), which held that awards

of meritorious good time are discretionary under KRS 197.045(3). In addition, the trial court found that Appellant failed to show that he performed any "exceptionally meritorious service" or any "duties of outstanding importance in connection with institutional operations or programs" as required by KRS 197.045(3).

Appellant filed a motion for reconsideration, which the trial court denied, precipitating this appeal. Our review of the trial court's dismissal for failure to state a claim is *de novo*. See James v. Wilson, Ky. App., 95 S.W.3d 875, 889 (2002).

Appellant presents several arguments on appeal. First, Appellant argues that he has been at least partially denied access to the courts, due process and equal protection under law, because he has no evidence of complete records being sent by the circuit court to this court. Moreover, Appellant does not have access to the circuit court's records to review them for completeness and compliance with his designation of the record. Second, Appellant argues that Appellees have abused their discretion in awarding meritorious good time and have failed to make accommodations for handicapped prisoners. In addition, the procedures for awarding meritorious good time are arbitrary and inconsistent. Third, Appellant claims that Appellees have discriminated against the handicapped because

they have not made reasonable accommodations for handicapped persons to enable them to participate in various programs for which they could achieve meritorious good time awards. Finally, Appellant argues that he is exempted from the requirements of the sexual offender treatment program because his sentence and conviction occurred in 1993.

Appellant's first argument is that he has been denied his right of access to the courts because he could not review the records of the Oldham Circuit Court. However, the Appellant never sent a request to the Oldham Circuit Clerk for copies of the record. Moreover, Appellant is not seeking any relief from any harm that may have been caused by not having access to the record. Finally, we believe that Appellant's claims are adequately set forth in Appellant's brief, despite Appellant's lack of access to the record.

We move to Appellant's second and third arguments, which we will address simultaneously. The trial court dismissed Appellant's declaratory judgment action based on Anderson v. Parker, 964 S.W.2d at 811, which held that prison inmates, such as Appellant, have no protected liberty interest at stake in the denial of meritorious good time. In Anderson, this court went on to say that an award of meritorious good time is a privilege, not a right. See Anderson, 964 S.W.2d at 810.

The trial court also based its dismissal of Appellant's action on Appellant's failure to show that he performed any "exceptionally meritorious service" or performed any "duties of outstanding importance in connection with institutional operations or programs" as required by KRS 197.045(3). However, Appellant's petition in the underlying declaratory judgment action alleges that Appellant is unable to participate in the current programs for which he could be considered for meritorious good time because he is disabled, and the Appellee has failed to accommodate Appellant's disabilities. The trial court did not address this claim in dismissing Appellant's petition. Because our United States Supreme Court has held that "the plain text of Title II of the ADA unambiguously extends to state prison inmates," we vacate the trial court's dismissal of Appellant's declaratory judgment action and remand to the trial court for proceedings consistent with this opinion. Pennsylvania Dept. of Corrections v. Yerskey, 524 U.S. 206, 213, 118 S. Ct. 1952, 141 L. Ed. 2d 215 (1998).

In Yerskey, Yerskey was an inmate in a Pennsylvania correctional facility. See id. at 208. The sentencing court recommended that Yerskey be placed in a motivational boot camp for first-time offenders, the successful completion of which would have led to Yerskey's release on parole in six months.

See id. The Pennsylvania Department of Corrections refused Yerskey's admission to the boot camp because he had a medical history of hypertension. See id. Yerskey sued the Pennsylvania Department of Corrections and several department officials, "alleging that his exclusion from the Boot Camp violated the ADA." Id. The District Court held that the ADA was inapplicable to inmates in state prisons and dismissed Yerskey's claim for failure to state a claim. See id. The Third Circuit reversed the District Court, and the Supreme Court granted certiorari to decide the issue of "whether Title II of the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 337, 42 U.S.C. § 12131 *et seq.*, which prohibits a 'public entity' from discriminating against a 'qualified individual with a disability' on account of that individual's disability, see § 12132, covers inmates in state prisons." Id.

In concluding that Title II of the ADA extended to state prison inmates, the Supreme Court held that state prisons fall within the statutory definition of "public entity." See id. at 210. Moreover, the Court was not persuaded by the Pennsylvania Department of Corrections' argument that a prison inmate could not be a "qualified individual with a disability" because prisoners are held against their will and are not receiving benefits from the state, two elements that are implied in the statutory definition of "qualified individual with a

disability." To the contrary, the Court held that the words of the definition did not connote voluntariness on the part of the individual, and even if they did, "it would still not be true that all prison 'services,' 'programs,' and 'activities' are excluded from the Act because participation in them is not voluntary." Id. at 211. As an example, the Court noted that a prison law library is a service which prisoners are free to take or leave. See id. In addition, the prison boot camp, the very program at issue in the case, was a voluntary program. See id.

In this case, Appellant should be permitted to proceed at the trial court level in establishing his ADA claim. Even though awards of meritorious good time are entirely discretionary, this should not preclude Appellant from arguing that the prison's failure to accommodate his disability is a violation of the ADA. The question of whether or not Appellant succeeds in establishing all of the requisite elements of his ADA claim remains for the trial court to decide on remand.

Finally, as to Appellant's last argument that he is exempted from the requirements of the sexual offender treatment program because his sentence and conviction occurred in 1993, we hold that this argument has not been properly preserved for appellate review because Appellant did not raise it in his petition for declaratory judgment. See Regional Jail Authority v. Tackett, Ky., 770 S.W.2d 225, 228 (1989).

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE

Willard D. Adams, pro se  
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