

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002594-MR

ELBERT PHILLIP LONG

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 00-CI-00480

JAMES L. MORGAN, WARDEN;
DOUG SAPP, COMMISSIONER;
TOM CAMPBELL, COMMISSIONER; NORTHPOINT
TRAINING CENTER; DEPARTMENT OF CORRECTIONS;
SERGEANT EARL WESTERFIELD;
CHIP HUNDLEY; KEITH SEARS; AND UNNAMED
CORRECTIONAL EMPLOYEES

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BAKER, GUIDUGLI, AND PAISLEY, JUDGES.

PAISLEY, JUDGE. Elbert Phillip Long appeals from an order of the Boyle Circuit Court denying his request for a writ of prohibition or a temporary restraining order, and granting summary judgment to appellees. Long claims that he was injured by having information about his convictions placed on the

Kentucky Offender Online Lookup (KOOL) system on the website of the Department of Corrections (DOC). He also claims that the DOC unconstitutionally denied him access to KOOL system information about another inmate. We affirm.

Long is an inmate at Northpoint Training Center in Burgin, Kentucky. On December 4, 2000, Long filed a motion for a temporary restraining order and/or emergency preliminary injunction with the Boyle Circuit Court. Appellees argued in response that because there was no action commenced or pending before the court, the court could not issue injunctive relief or a restraining order. See CR 65. Long then filed and the court granted a motion to amend and supplement the pleadings, which was followed by Long's petition for a writ of prohibition. Next, the court construed Long's various motions as together articulating a complaint sufficient to support the motion for a temporary restraining order. However, on August 2, 2001, the court entered an order granting summary judgment¹ to appellees and denying Long's requests for injunctive relief. This appeal followed.

¹ In the circuit court Long argued that appellees' motion for summary judgment was improperly before the court, in that appellees had not filed a motion but only a memorandum in support of a motion that had never been filed. Appellees replied that the motion had been inadvertently mistitled but that it clearly stated it was a motion for summary judgment. The circuit court found that the clerical error was harmless. Long has not appealed this finding.

Initially, we shall address the circuit court's determination that a writ of prohibition was inappropriate. The court stated in its judgment as follows:

Writs of prohibition are extraordinary remedies that are issued by a court only where (1) a lower court is proceeding or is about to proceed in an incorrect manner or in a manner outside of its jurisdiction, (2) there is no adequate remedy available to the petitioner by appeal or otherwise, and (3) the petitioner can show that great injustice and irreparable injury would result. Southeastern United Medigroup v. Hughes, Ky., 952 S.W.2d 195, 199 (1995). This form of remedy is completely inappropriate to the above-styled action because there is no lower court action that has occurred or is in dispute and this Court cannot issue a Writ of Prohibition against actions undertaken by an executive branch agency.

As this is a correct statement of the pertinent facts and the applicable law, we affirm the court's order denying the requested writ.

The court's judgment identified Long's underlying claims as follows: "(1) he will suffer defamatory injury in the event the KOOL system is permitted to operate, (2) operation of the KOOL system has deprived or will deprive him of fundamental rights protected by the United States Constitution without due process of law, and (3) operation of the KOOL system will work as a violation of his rights under the Kentucky Constitution." As Long does not argue on appeal that the circuit court misconstrued his claims, we will review the various claims in

the manner in which they were grouped and described by the circuit court.

First, appellant contends that the court erred by granting summary judgment for appellees as to his claim that he will suffer defamatory injury if the KOOL system is permitted to operate. The four elements necessary to establish a defamation claim are: 1) defamatory language; 2) about the plaintiff; 3) which is published; and 4) which causes injury to the plaintiff's reputation. Columbia Sussex Corp., Inc. v. Hay, Ky. App., 627 S.W.2d 270, 273 (1981). Here, the court found that the information on the KOOL system accurately reflected Long's convictions for attempted first-degree rape and murder. The record also establishes that the KOOL system correctly reflected that he was sentenced to serve five years for the attempted rape and life for the murder. As Long could not show that there was any fraudulent or false information about him or his convictions posted on the KOOL system, and he therefore could not present any evidence to establish defamation, it is clear that the court properly granted appellees summary judgment on the defamation claim.

Long also argues that the trial court ignored his argument that he has completed the sentence for the attempted rape, that it is now criminal history, and that it therefore is not a matter of public record. He asserts that the information

was not lawfully posted on the website, as KRS 17.150(4) provides in part as follows:

Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision, and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto.

However, this argument ignores the fact that the remainder of KRS 17.150(4) provides:

Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the Justice Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.

KRS 17.150(1) specifically identifies the DOC as being one of the many criminal justice agencies which is required to provide information to the Justice Cabinet. The DOC's KOOL system, which maintains information transferred from public court records and operates as a source of "the information collected by the Justice Cabinet," clearly falls within the exclusion set out in the final two sentences of KRS 17.150(4). As the records in the

KOOL system are not among those protected by KRS 17.150(4), the trial court did not err by failing to grant relief on this ground.

Long next claims that his equal protection rights were violated when he was denied access to KOOL information about another inmate who allegedly abused Long's daughter. Long argues that he is a "victim" pursuant to KRS 421.500(1), and that he was discriminated against and deprived of his parental rights because he was denied the opportunity to protest the other inmate's parole when he was denied access to that inmate's KOOL information pursuant to DOC policy, although such information is available to other crime victims. However, the denial of information to Long was in accordance with KRS 197.025(2), which restricts inmate access to information about the facility or inmates "unless the request is for a record which contains a specific reference to that individual." As the denial of information therefore occurred pursuant to statute rather than pursuant to DOC policy, and since Long did not raise a constitutional challenge to KRS 197.025(2), he is not entitled to relief on this claim.

Long next claims that his due process rights were violated because he was not provided with prior notice before data about him was entered into the KOOL system. The due process clause of the Fourteenth Amendment prohibits a state

from depriving any person of life, liberty, or property without due process of law. U.S. CONST. Amend. XIV, §1. Long has simply failed to show that this use of the information, which is readily available to the general public upon request, deprived him of any right protected by the constitution, state law or regulation. Moreover, if Long is intending to assert that KRS 17.150(4) provides him with some liberty interest, this effort also must fail for the reasons stated above.

Finally, Long claims that his rights under sections 2, 3, 9, 26, 27 and 28 of the Kentucky Constitution have been violated. This claim is based on his contention that appellees have unconstitutionally amended and altered his five-year sentence for attempted rape into a life sentence, with the result that false and fraudulent information regarding this conviction was posted on the Internet. We disagree.

Our review of the judgments from the sentencing court establishes that Long was sentenced to life on the murder charge and five years on the attempted rape charge, with the five-year sentence to be served consecutive to the life sentence. The record shows that the KOOL system correctly reflects those two convictions and sentences. Although Long argues that pursuant to Bedell v. Commonwealth, Ky., 870 S.W.2d 779, 783 (1993), "no sentence can be ordered to run consecutively with such a life sentence," the issue of whether Bedell applies to Long's 1977

sentence is not properly before this court since Long's claim before the circuit court was that the KOOL system inaccurately, falsely or fraudulently reflected his convictions. As it does not, appellees were entitled to summary judgment on this issue.

Having reviewed the record, it is clear that it would be impossible for Long to prove facts establishing his right to relief. It follows, therefore, that the trial court did not err either by granting summary judgment in favor of appellees, or by denying Long's requests for injunctive relief. See Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991); Blevins v. Moran, Ky. App., 12 S.W.3d 698, 701 (2000); Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 781 (1996).

The order of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Elbert Phillip Long, pro se
Burgin, Kentucky

BRIEF FOR APPELLEE:

Amy V. Barker
Frankfort, Kentucky