

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-002205-MR

WILLIE J. STEWART

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE PAUL W. ROSENBLUM, JUDGE  
ACTION NO. 02-CI-00247

CAROL BLACK

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: COMBS, JOHNSON AND MINTON, JUDGES.

JOHNSON, JUDGE: Willie J. Stewart, pro se, has appealed from an order of the Oldham Circuit Court dismissing his motion for declaratory and other relief against several individuals employed by the Kentucky Department of Corrections. Having concluded that the circuit court erred when it ruled that his petition was barred by the limitations period provided in KRS<sup>1</sup> 61.880(5)(a), we vacate and remand for further proceedings.

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<sup>1</sup> Kentucky Revised Statutes.

Stewart is currently incarcerated in the Luther Luckett Correctional Complex. Beginning in October 2000, Stewart made several requests for records pertaining to his case from the Parole Board and the Department of Corrections, pursuant to the Open Records Act.<sup>2</sup> These requests were denied in whole or in part. Stewart subsequently filed an appeal with the Office of the Attorney General. On March 13, 2001, the Attorney General issued an opinion upholding the actions of the Department of Corrections.

On April 19, 2001, Stewart filed a pro se action for declaratory judgment with the Oldham Circuit Court. The petition was dismissed by an order entered on September 3, 2002. In arriving at its decision, the circuit court relied on KRS 61.880(5)(a), which states in relevant part that "[a] party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision." Because Stewart's petition was filed more than 30 days after the rendering of the Attorney General's opinion, the circuit court ruled that it was untimely and that it had lost jurisdiction over the action.

Stewart appeals this dismissal on the grounds that his petition for declaratory relief was not merely an appeal of the Appeal General's opinion, but also contained independent claims

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<sup>2</sup> KRS 61.870 et seq.

for relief pursuant to KRS 418.040 and KRS 418.080.<sup>3</sup> He maintains that these claims constitute separate jurisdictional grounds for the circuit court to entertain his petition. He contends that unresolved controversies still exist and that the dismissal of the petition was a violation of his state and federal constitutional rights.

We agree with Stewart that his petition for declaratory judgment raised issues not addressed in the Open Records action. For instance, Stewart's petition challenged the constitutionality of the KOOL (Kentucky Offender Online Lookup System) and VINE (Victim Information Notification Everyday) systems, an issue not raised in the appeal to the Attorney General. Therefore, the circuit court erred in treating Stewart's petition solely as an appeal of the Attorney General's opinion.

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<sup>3</sup> KRS 418.040 states:

In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

KRS 418.080 states:

KRS 418.040 to 418.090 is declared to be remedial; their purpose is to make courts more serviceable to the people by way of settling controversies, and affording relief from uncertainty and insecurity with respect to rights, duties and relations, and are to be liberally interpreted and administered.

Furthermore, under the provisions of the Open Records Act, Stewart is permitted to file an original action in the circuit court alleging violations of the Act. KRS 61.882(2) states that "[a] person alleging a violation of the provisions of KRS 61.870 to 61.884 [the Open Record Act] shall not have to exhaust his remedies under KRS 61.880 before filing suit in a Circuit Court."

Accordingly, the order dismissing the petition for declaratory judgment is vacated and this matter is remanded to the Oldham Circuit Court for further proceedings consistent with this Opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Willie J. Stewart, Pro Se  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

No brief filed