RENDERED: August 22, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000188-MR

YORIG R. REYES — APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 02-CI-00262

JOHN MOTLEY — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: PAISLEY AND TACKETT, JUDGES; HUDDLESTON, SENIOR JUDGE.[1]

TACKETT, JUDGE: Yorig Reyes appeals from an order of the Morgan Circuit Court denying his petition for a declaration of rights and finding that his claim of a right to be awarded meritorious good time was without legal merit. We affirm the decision of the circuit court because no inmate has a right to meritorious good time; therefore, the Fourteenth Amendment to the United States' Constitution does not convey a right to receive due

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

process even if the state arbitrarily refuses to award such good time.

Reyes has been incarcerated since 1989 serving a life sentence for criminal conspiracy to commit murder as well as four twenty year sentences for two counts of first-degree sodomy, first-degree robbery, and criminal attempt to commit murder and finally a three-year sentence for second degree escape. Reyes previously earned awards of meritorious good time in 1990, 1992 and 1993, as well as 60 days educational good time in 1992 all during his incarceration at Kentucky State Reformatory in LaGrange. In 1993, Reyes was transferred to Eastern Kentucky Correctional Complex in West Liberty where he ceased to receive meritorious good time awards. On July 23, 2002, he wrote a letter to the Department of Corrections requesting an award of meritorious good time. A month later, he received a response from the Warden, John Motley, who stated that he did not recommend meritorious good time awards for inmates serving life sentences. Reyes filed a motion with the Morgan Circuit Court requesting a declaratory judgment and permanent injunctive relief to bar the warden from considering the length of his sentence in determining whether to recommend meritorious good time. The circuit court dismissed the petition finding that it lacked legal merit, and this appeal followed.

Reyes argues that he has a right to receive meritorious good time, regardless of the length of his sentence, which cannot be arbitrarily denied without due process. The Department of Corrections adopted Corrections Policies and Procedures (C.P.P.) 15.3, pursuant to specific authority delegated to the Department by the legislature in Kentucky Revised Statute 197.045(3) which states as follows:

> An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed five (5) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs. The allowance shall be in addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.

C.P.P. 15.3 authorizes the award of meritorious good time which is defined as, "a good time credit that may be awarded for performing duties of outstanding importance in connection with institutional operations and programs." Reyes contends that this language prohibits the commissioner from considering the length of a prisoner's sentence in determining whether to award meritorious good time and that the circuit court erred in finding that he had no protected liberty interest in receiving such an award.

The circuit court, in reliance on our prior decision in Anderson v. Commonwealth, Ky. App., 964 S.W.2d 809 (1997),

dismissed Reyes' petition because he failed to allege that he met the statutory criteria for an award of meritorious good time by performing duties of outstanding importance. Anderson involved a single inmate who appealed from an order of the Lyon Circuit Court denying nine inmate petitions for declaratory judgment and refusing to certify them as a class for purposes of a class action proceeding. In our decision affirming the trial court in that case, we stated as follows:

> This is not a case where the state has created a right to a good time credit which has not been awarded or taken from an inmate for misconduct. See, Wolff v. McDonnell, 418 U.S. 539, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974); Sandin v. Conner, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). In such cases Fourteenth Amendment "liberty" is implicated entitling inmates to minimum procedures required by the due process clause to insure that the state-created right is not arbitrarily abrogated. No inmate has a right to meritorious good time under CPP 15.3, it is a privilege bestowed at the discretion of the Commissioner.
>
> Because the award of meritorious good time under CPP 15.3 is left entirely to the discretion of prison administrators, we hold inmates such as appellant have no protected liberty interest at stake in [its] denial.

Id. at 810. Reyes argues that the circuit court erred in determining that he failed to allege that he performed duties of outstanding importance and directs our attention to a letter, attached to his original petition, which describes his work in the prison's adult literacy program.

Regardless of that fact, our decision in Anderson held that an inmate has no right to receive meritorious good time which would be subject to the Fourteenth Amendment's due process requirements. Consequently, the trial court correctly declined to review the commissioner's decision to deny Reyes' request for meritorious good time.

In addition, Reyes claims that his Fourteenth Amendment right to equal protection was violated in that inmates who are serving a seventy-year sentence may receive meritorious good time which he is being denied. The circuit court determined that Reyes failed to show that he was denied equal protection because other inmates in other circumstances have received meritorious good time. On appeal, Reyes argues that the circuit court misconstrued his allegation and that similarly situated inmates are receiving awards of meritorious good time while he is not. We would first note that inmates are not members of a protected class. Hampton v. Hobbs, 106 F.3d 1281, 1286 (6th Circuit 1997). Furthermore, an inmate serving a seventy-year sentence is not similarly situated to Reyes who is serving a life sentence. Finally, since Reyes has no right to receive meritorious good time at all, he cannot prevail on a claim that this non-existent right is subject to equal protection under the Fourteenth Amendment.

For the foregoing reasons, the order of the Morgan Circuit Court denying Reyes petition for a declaratory judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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