

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002574-MR

RALPH FRANKLIN, JR.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
INDICTMENT NO. 00-CR-002022

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
DISMISSING

** ** *

BEFORE: HENRY, McANULTY, AND MINTON, JUDGES.

HENRY, JUDGE: Ralph Franklin, Jr. appeals from an October 31, 2003 order of the Jefferson Circuit Court denying his "motion for clarification of sentence." For reasons not set forth by the trial court or the parties, this appeal must be dismissed.

On September 20, 2000, Franklin was indicted by the Jefferson County Grand Jury on one count of first-degree sodomy pursuant to KRS¹ 510.070(1)(b)(ii) and one count of first-degree sexual abuse pursuant to KRS 510.110(1)(b)(ii). Franklin subsequently pled not guilty to the indictment. However, on

¹ Kentucky Revised Statutes.

March 15, 2001, Franklin filed a motion to change his plea to guilty in conjunction with the Commonwealth's plea bargain offer to drop the sodomy count and to recommend five years imprisonment on the sexual abuse count, with the issue of probation being left in the trial court's discretion. On March 19, 2001, the trial court accepted Franklin's guilty plea, and on April 19, 2001, the court entered a judgment and sentence order finding Franklin guilty of the sexual abuse count and giving him a probated five-year sentence subject to his compliance with a number of conditions.

On August 29, 2001, the Commonwealth filed a motion to revoke Franklin's probation due to a number of probation violations, including use and possession of alcohol, curfew violations, providing false information to a probation and parole officer, failing to attend treatment for substance abuse, failing to report to a probation and parole officer as directed, and being terminated from the Kentucky Sex Offender Treatment Program due to continued alcohol use and failing to attend. On October 29, 2001, following a hearing on the Commonwealth's motion, the trial court entered an order revoking Franklin's probation and requiring him to be delivered to the Kentucky Department of Corrections to serve the five-year sentence entered in the court's April 19, 2001 judgment and sentence order.

On July 30, 2003, while still incarcerated, Franklin filed a "motion for clarification of sentence" based upon his assertions that the Department of Corrections had inappropriately altered the trial court's previous judgments by requiring him to serve his complete five-year sentence without the benefit of "good time credits," pursuant to KRS 197.045(4), by extending his sentence of imprisonment from five to eight years, pursuant to the mandatory three-year conditional discharge period set forth by KRS 532.043, and by extending his term of sex offender registration with the Kentucky State Police from ten to fifteen years since his registration period was tolled while he was imprisoned, pursuant to KRS 17.520(4). This motion was denied by the trial court in an October 31, 2003 handwritten order. A subsequent motion to vacate judgment filed by Franklin was also denied. This appeal followed.

The parties and the trial court below notably failed to address the viability of the motion used by Franklin in seeking relief. As stated above, Franklin's pleading was styled as a "motion for clarification of sentence," and it was filed in conjunction with the original criminal action that led to his conviction. Franklin's motion did not attack the original judgment revoking his probation and sentencing him to five years imprisonment, nor did it seek any type of relief from that

judgment. Instead, it only sought relief from the actions of the Department of Corrections.

Our Supreme Court has held that a motion for declaratory judgment pursuant to KRS 418.040 is the vehicle, whenever habeas corpus proceedings are inappropriate,² whereby inmates may seek review of their disputes with the Department of Corrections. Million v. Raymer, 139 S.W.3d 914, 918 (Ky. 2004), quoting Smith v. O'Dea, 939 S.W.2d 353, 355 (Ky.App. 1997), and citing Polsgrove v. Kentucky Bureau of Corrections, 559 S.W.2d 736 (Ky. 1977); Graham v. O'Dea, 876 S.W.2d 621 (Ky.App. 1994). The vehicle used by Franklin here for relief has not been recognized by our courts as an appropriate mechanism for an inmate to challenge an action of the Department of Corrections. Accordingly, we conclude that his appeal must be dismissed. See Hoskins v. Commonwealth, 158 S.W.3d 214, 217 (Ky.App. 2005).

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE:

Ralph Franklin, Jr.
Central City, Kentucky

² A writ of habeas corpus is not appropriate here because Franklin is not alleging that he "is being detained without lawful authority or is being imprisoned when by law he is entitled to bail." KRS 419.020; see also Graham v. O'Dea, 876 S.W.2d 621, 622 (Ky.App. 1994) ("The statute applies only to individuals who can demonstrate that they are entitled to release from custody. Prison disciplinary disputes, such as the loss of good-time credits may be addressed by other means.").