

RENDERED: APRIL 22, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

## Commonwealth Of Kentucky

### Court of Appeals

NO. 2004-CA-000904-MR

JEFFERY L. CARPENTER

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 03-CI-01548

KENTUCKY PAROLE BOARD AND  
DEPARTMENT OF CORRECTIONS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: JOHNSON AND McANULTY, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

McANULTY, JUDGE: Jeffery Carpenter appeals the order of the Franklin Circuit Court which granted summary judgment to the Kentucky Parole Board and Department of Corrections on his petition for writ of mandamus. Carpenter sought mandamus

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<sup>1</sup> 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.

because he alleged his waiver of a parole revocation hearing was not made knowingly or intelligently, and he believed for various reasons his parole should not have been revoked. The court below granted summary judgment based on a finding that Carpenter's claim in his petition for writ of mandamus was moot. The court found that because Carpenter was convicted in 2003 for first degree sexual abuse and being a persistent felony offender his parole was automatically revoked under KRS 439.352.

On appeal, Carpenter asserts that he did not receive a new conviction until some fourteen months after his parole was revoked. He contends that his parole revocation for two technical violations did not require that he be returned to prison. Carpenter argues that the claims were not moot because he was not returned to prison on a new conviction, and so KRS 439.352 has no application to this case.

We affirm the Franklin Circuit court's grant of summary judgment. It is irrelevant that Carpenter's new convictions had not occurred at the time his parole was originally revoked. The deciding fact is that now Carpenter has no eligibility for parole as his parole would have been revoked automatically in 2003 under KRS 439.352 no matter what procedure or result he received on his parole revocation hearing. Carpenter's claims are moot.

For the foregoing reasons we affirm the order of the  
Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Jeffery L. Carpenter, Pro Se  
West Liberty, Kentucky