

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-001292-MR

WILLIAM B. WALKER

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE PAUL W. ROSENBLUM, JUDGE  
ACTION NO. 04-CI-00294

COMMONWEALTH OF KENTUCKY;  
AND LARRY CHANDLER, WARDEN  
KENTUCKY STATE REFORMATORY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER, DYCHE, AND VANMETER, JUDGES.

BARBER, JUDGE: Appellant, William Walker (Walker), appeals the Oldham Circuit Court's denial of his petition for declaration of rights and imposition of a fine for contempt. We affirm.

Walker filed the underlying Petition for Declaration of rights asking the circuit court for an interpretation of his unpublished 1976 Kentucky Supreme Court case. The Commonwealth filed a motion for summary judgment in response, and also requested a special finding that the action was frivolous.

Walker was unable to make a timely response and an order granting summary judgment was entered in the absence of his response. The court also dismissed his petition and entered the special findings requested by the Commonwealth. Walker filed a motion to vacate the summary judgment and to set aside the dismissal and special findings. The motions were denied and this appeal follows.

The Commonwealth filed a motion with this Court asking for a special finding under KRS 197.045(5)(a) that the appeal is frivolous, malicious or harassing. The Commonwealth notes that Walker failed to file a direct appeal from his conviction, but has filed 39 post-conviction motions. The Oldham Circuit Court fined Walker \$750 for contempt in regard to the motion underlying this appeal. According to evidence filed by the Commonwealth, every one of the petitions and motions has been either denied or dismissed. Circuit and appellate courts have held Walker's repeated motions to be frivolous on several occasions.

Walker asserts that the circuit court's determination that there was no irregularity in the proceedings was clearly erroneous and constitutes reversible error. Walker contends that he was denied access to his mail for a time by the warden, and that this resulted in his failure to amend his pleading at the court's order. He claims that this created an irregularity

in the proceeding requiring setting aside the trial court's rulings. The court's order merely requested a change in the style of the response. Walker's failure or inability to comply did not affect the substance of the action and did not create an irregularity requiring reversal.

Walker argues that the trial court erred in concluding that the judgment was not obtained through misconduct of the Commonwealth. Walker claims that the Commonwealth's response to his petition failed to address his attack on the constitutionality of the statute under which he was convicted and constituted fraud on the court and bad faith. Walker provides no citation to any authority in support of his position and does not explain where in the record any claimed fraud or bad faith may be found. We find no evidence of fraud or bad faith on the part of the Commonwealth. The court's orders relating to this issue are therefore affirmed.

Walker contends that the circuit court improperly construed his petition for declaration of rights as a *writ of habeas corpus*, and that the ruling should be set aside for this reason. This contention is unsupported by the record.

Walker argues that *res judicata* does not bar review of his 1976 Kentucky Supreme Court opinion. This contention is clearly unsupported by law. Kentucky Courts have addressed the issues he raises, and further requests for review are barred by

*res judicata* and collateral estoppel, as discussed by the trial court in its Order Denying Petition for Declaration of Rights of June 3, 2004. *Res judicata* bars relitigation of matters previously litigated. Barnett v. Commonwealth, 348 S.W.2d 834, 835 (Ky. 1961). Walker's failure to respect these longstanding principles of law and refusal to cease review of that case is an abuse of the legal system.

Walker claims that the summary judgment entered by the court is fatally defective because it does not state that the Commonwealth was entitled to judgment as a matter of law. We believe that the order is a clear statement of the law and affirm entry of the order.

Walker asserts an abuse of discretion by the trial court. He also argues that the fine imposed on him was contrary to law. Walker has repeatedly been fined for filing frivolous actions. Circuit and appellate courts have requested that he cease filing such actions. Walker's willful refusal to stop filing actions demanding review of matters incapable of review supports imposition of the fine against him. Walker has not shown that he is indigent or unable to pay the fine and has failed to show that the law requires that the fine be set aside. Courts have an inherent power to punish for contempt. Norton v. Commonwealth, 37 S.W.3d 750, 751 (Ky. 2001). In the absence of a jury trial, a court may impose a fine of up to \$500.00.

Miller v. Vettiner, 481 S.W.2d 32, 35 (Ky. 1972). Pleadings such as those filed by Walker provide grounds for such a fine for criminal contempt. Newsome v. Commonwealth, 35 S.W.3d 836, 841 (Ky.App. 2001). While we decline to impose a separate fine, we affirm the imposition of the fine by the trial court up to the limit of \$500.00.

Lastly, Walker contends that KRS 197.045(5)(A) is unconstitutional. While the Commonwealth fails to address this argument, the law is clear in holding that a statute must be presumed constitutional. Wethington v. Commonwealth, 549 S.W.2d 530, 531 (Ky.App. 1977). Walker failed to provide any support for his contention. In addition, this Court notes that even in the absence of such a statute, the circuit court has the inherent right to impose a fine for contempt. The circuit court judgment is affirmed.

ALL CONCUR.

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