

RENDERED: JUNE 24, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001994-MR

ROY FREDRICKS

APPELLANT

APPEAL FROM BELL CIRCUIT COURT
v. HONORABLE JAMES L. BOWLING, JR., JUDGE
INDICTMENT NO. 04-CI-00473

DOUGLAS FLETCHER¹

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: BARBER AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE.²

HUDDLESTON, SENIOR JUDGE: On February 4, 2002, Roy Fredricks was convicted of trafficking in a controlled substance in the first degree and was sentenced to serve five years in prison. On December 23, 2002, the Kentucky State Parole Board granted Fredricks parole. However, in 2004, Fredricks was arrested for violating the conditions of his parole, and the Parole Board

¹ We note that, in his notice of appeal, Fredricks improperly named John T. Damron, the attorney for the Department of Corrections, as the appellee in this appeal.

² 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.

subsequently revoked his parole. Afterwards, the Department of Corrections (DOC) placed Fredricks in the Bell County Forestry Camp to serve out the remainder of his prison sentence.

On September 3, 2004, Fredricks filed in Bell Circuit Court a petition for declaration of rights in which he named Douglas Fletcher³ as defendant. On April 1, 2003, the General Assembly enacted House Bill 269, which, according to Fredricks, amended Kentucky Revised Statutes (KRS) 439.344 to allow a prisoner who had his parole revoked during the effective time period of the provision to receive credit toward the unexpired remainder of his sentence for the time spent on parole after the implementation of the provision.

According to Fredricks, he was arrested on April 27, 2004, for violating his parole, and, on May 5, 2004, a detainer was lodged against him. He averred that on May 27, 2004, he signed a waiver so he could be returned to prison. Fredricks argued that, pursuant to KRS 439.440, he should have received a hearing before the Parole Board no later than thirty days from May 27, 2004. He argued that DOC purposely delayed his hearing until after June 30, 2004, thereby violating KRS 439.440, so he would not receive credit for the time he spent on parole as provided by HB 269. Fredricks argued that by doing so DOC violated his constitutional rights.

³ Douglas Fletcher was warden of the Bell County Forestry Camp at the time Fredricks filed his petition for declaration of rights.

DOC moved to dismiss Fredricks' petition arguing that the Parole Board was not required to make a decision regarding the revocation of a prisoner's parole within a specified time period since parole is not a right but a statutory privilege. Therefore, Fredricks was not guaranteed a hearing within thirty days of being returned to prison. Furthermore, since his parole was revoked after the expiration of HB 269, he was not entitled to receive credit for the time he spent on parole.

On September 16, 2004, the trial court granted DOC's motion and dismissed Fredricks' petition after determining that Fredricks had failed to state grounds upon which relief could be granted. Now, Fredricks appeals, *pro se*, to this Court.

On appeal, Fredricks argues that HB 269 did not expire on June 30, 2004; instead, he insists, the provision repealed and replaced KRS 439.344. He argues that since he met the requirements of HB 269, he should have received credit towards the unexpired remainder of his sentence for the time he spent on parole.

The General Assembly enacted HB 269 as 2003 Ky. Acts, Ch. 156, Part IX, item 36(a), and, contrary to Fredricks' insistence, this provision was not intended to permanently amend KRS 349.344 since it did not conform to the requirements of KRS 446.145. According to KRS 446.145:

- 1) Bills amending an existing section of the statutes shall indicate the material proposed to be deleted by brackets and by striking through the material.
- 2) Bills amending an existing section of the statutes shall indicate new material by underlining.

After reviewing 2003 Ky. Acts, Ch. 156, Part IX, item 36(a), we find that the General Assembly neither placed within brackets nor struck any of the language found in KRS 439.344, thus indicating that it did not intend to delete any of the statute's language. Neither did the General Assembly underline the language found in 2003 Ky. Acts, Ch. 156, Part IX, item 36(a), thereby indicating that it did not intend to add HB 269 to KRS 439.344. Furthermore, HB 269 was never codified as part of the Kentucky Revised Statutes; instead, it was allowed to expire on June 30, 2004. Consequently, HB 269 did not repeal KRS 439.344.

In the alternative, Fredricks advances the same argument that he presented below, that DOC violated his constitutional rights because the Parole Board failed to hold a hearing regarding the revocation of his parole within thirty days of his return to prison as required by KRS 439.440.

Fredricks is correct that KRS 439.440 requires the Parole Board to hold a revocation hearing within thirty days of the prisoner's return to prison. To support his petition for declaration of rights, Fredricks attached a copy of a Kentucky Corrections Resident Record Card regarding himself. Although

this record card is not an official document, it does show that a warrant was issued for Fredricks on June 24, 2004. Even considering the evidence provided by Fredricks, there is nothing in the record that supports his contention that he returned to prison in May of 2004. In addition, the record does not reveal the date on which the Parole Board held the hearing regarding Fredricks' parole, but Fredricks admits that this hearing was held sometime after June 30, 2004, the date on which HB 269 expired. Thus, there is no evidence in the record to support Fredricks' contention that DOC violated KRS 439.440.

In addition, Fredricks argues that he was charged with parole violations on April 27, 2004. Therefore, he reasons that he should have received the benefit of HB 269 because, at the time he was charged with violating his parole, HB 269 was still in effect.

The relevant part of HB 269, which applies to this case, provides that

[n]otwithstanding KRS 439.344, the period of time spent on parole shall count as a part of the prisoner's remaining unexpired sentence . . . when a parolee is returned as a parole violator for a violation other than a new felony conviction.⁴

Pursuant to HB 269, a prisoner could only receive credit for time spent on parole if he was returned to prison as a parole

⁴ 2003 Ky. Acts, Ch. 156, Part IX, item 36(a).

violation for technical violations. Thus, only after the Parole Board has actually revoked a prisoner's parole and ordered him to be returned to prison, would a prisoner have been entitled to the credit set forth in HB 269. So Fredricks was not entitled to credit for the time he spent on parole, pursuant to HB 269, at the time he was charged with violating his parole, nor was he entitled to that credit at the time his parole was revoked since the provision had previously expired.

Since Fredricks has failed to show that he was entitled to credit towards the unexpired remainder of his sentence for the time he spent on parole, we affirm the order dismissing Fredricks' petition.

ALL CONCUR.

BRIEF FOR APPELLANT:

Roy Fredricks, *pro se*
Pineville, Kentucky

BRIEF FOR APPELLEE:

John T. Damron
Justice Cabinet
Department of Corrections
Office of General Counsel
Frankfort, Kentucky