

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000126-MR

DUANE HAWKINS

APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 04-CI-00210

JOHN MOTLEY, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: BUCKINGHAM, HENRY, AND VANMETER, JUDGES.

VANMETER, JUDGE: Duane Hawkins appeals pro se from the Morgan Circuit Court's order denying his motion seeking declaratory judgment relating to the credit he was awarded toward his prison sentence for his work as a prison cook from May 1, 2003 through August 2003. He contends that his award of nine days' credit was substantially less than that to which he is entitled. We affirm.

The parties have not disputed that prior to June 24, 2003, Hawkins was eligible under the Kentucky Corrections

Policies and Procedures (CPP) to earn time credit for his prison work as a cook. However, as of the June 24, 2003 effective date of KRS 197.047, prisoners became ineligible to earn time credit if they were serving sentences for violent offenses "as defined in KRS 439.3401." As Hawkins currently is serving a sentence for first-degree robbery, which is a "violent offense" as defined by KRS 439.3401, he clearly is ineligible to accumulate time credit for any work performed on or after June 24, 2003.

Moreover, we are not persuaded that time credit was incorrectly calculated for the period from May 1 through June 23. According to the draft version of CPP 19.3 Section VI(C)(4),¹ which Hawkins relied upon below and on appeal, he is entitled to eight hours' credit for each day he worked as a cook during the eligible period. Further, according to Section VI(C)(3) of the same document, Hawkins was not permitted to work more than five days per week, and time credits must be calculated as provided in CPP 19.2, which in turn refers to the calculation of credits as provided in KRS Chapter 197. Hawkins then relies on "Senate Bill 123," which became effective on June 24, 2003 as KRS 197.047, and which provides for the calculation of time credits as follows:²

(a) For every eight (8) full hours of work,
one (1) sentence credit shall be earned;

¹ Effective February 15, 2001.

² KRS 197.047(8).

(b) For every five (5) sentence credits earned, one (1) day of the sentence to be served by the inmate shall be deducted; and

(c) Sentence credits shall be deducted from the maximum expiration date of the sentence.

Here, we take judicial notice of the fact that the 2003 calendar shows that the period of May 1 through June 23 amounted to 54 days stretching over parts of nine weeks. As there is no evidence that Hawkins received written approval to work more than five days per week, it is clear whether the credit is calculated by dividing 54 days by seven, or by awarding Hawkins with one day's credit for each full or partial week worked, that Hawkins could not possibly have earned more than the nine days' credit which he was given for his eligible work. It follows, therefore, that Hawkins is not entitled to any additional days' credit for his work. Given this outcome, we conclude that there is no merit in his remaining allegations on appeal. The trial court did not err by denying the requested relief.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Duane Hawkins, pro se
Louisville, Kentucky

BRIEF FOR APPELLEE:

No appellee brief filed