

RENDERED: JUNE 2, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-000279-MR

LARRY E. WATKINS-EL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE LISABETH HUGHES ABRAMSON, JUDGE  
ACTION NO. 04-CI-008989

ERNIE FLETCHER, GOVERNOR

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JOHNSON AND TAYLOR, JUDGES; BUCKINGHAM, SENIOR JUDGE.<sup>1</sup>  
JOHNSON, JUDGE: Larry E. Watkins-El, pro se, has appealed from  
the order of the Jefferson Circuit Court entered on January 7,  
2005, which dismissed his complaint against Governor Ernie  
Fletcher for failure to state a claim upon which relief can be  
granted. Having concluded that the trial court correctly  
dismissed this action, we affirm.

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<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On October 22, 2004, Watkins filed a pro se complaint in the Jefferson Circuit Court against Governor Fletcher in his individual and official capacities, claiming that Governor Fletcher had failed in his duties under Section 81 of the Kentucky Constitution to "take care that the laws be faithfully executed[,]" and had failed to commute Watkins's sentence of life in prison.<sup>2</sup> Watkins also requested that he be awarded \$200,000.00 in damages.

On November 24, 2004, Governor Fletcher filed a motion to dismiss Watkins's complaint stating that Watkins had failed to state a claim upon which relief can be granted.<sup>3</sup> Watkins filed a response on November 30, 2004.<sup>4</sup> The trial court entered an order on January 7, 2005, dismissing Watkins's complaint. This appeal followed.

Our standard of review in reviewing a trial court's dismissal of a complaint for failure to state a claim has recently been explained as follows:

"The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." In making this decision, the

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<sup>2</sup> Watkins was convicted in 1986 for assault in the first degree, possession of a handgun by a convicted felon, and being a persistent felony offender in the first degree. He was convicted in 1991 for escape in the second degree.

<sup>3</sup> Kentucky Rules of Civil Procedure (CR) 12.02.

<sup>4</sup> Watkins also propounded interrogatories to Governor Fletcher which were not answered.

circuit court is not required to make any factual determination; rather the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief [footnotes omitted].<sup>5</sup>

Accordingly, we must determine whether Watkins is entitled to relief if he can prove the allegations in his complaint. To answer that question we must first look at the authority granted to the Governor under the Kentucky Constitution.

Section 77 of the Kentucky Constitution provides that the Governor has the power to pardon or to commute a sentence of imprisonment. However, such a pardon or commutation is within the sole discretion of the Governor, and a complaining party has no legally cognizable liberty interest or right to a pardon or commutation of sentence.<sup>6</sup> The Court of Appeals for the Sixth Circuit stated in the case of In re Sapp,<sup>7</sup> as follows:

Section 77 of Kentucky's Constitution simply grants the Governor the power to "remit fines and forfeitures, commute sentences, grant reprieves and pardons." It in no way establishes specific procedures to be followed and imposes no standards, criteria, or factors that the Governor need consider in exercising his power. Thus, in Kentucky, the decision to grant clemency is left to the Governor's unfettered discretion

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<sup>5</sup> James v. Wilson, 95 S.W.3d 875, 883-84 (Ky.App. 2002) (quoting Pari-Mutuel Clerks' Union v. Kentucky Jockey Club, 551 S.W.2d 803 (Ky. 1977)).

<sup>6</sup> See Workman v. Bell, 245 F.3d 849 (6th Cir. 2001) (stating that a death row inmate had no constitutional right to clemency proceedings).

<sup>7</sup> 118 F.3d 460 (6th Cir. 1997).

and the state has not made the clemency process an integral part of the state's overall adjudicative process.<sup>8</sup>

Since the authority granted the Governor to pardon or to commute a sentence is purely discretionary, Watkins "would not be entitled to relief under any set of facts which could be proved in support of his claim."<sup>9</sup> Further, any claim by Watkins for monetary damages against Governor Fletcher in his official capacity is barred by sovereign immunity.<sup>10</sup> Therefore, we agree with the trial court that Watkins's complaint failed to state a claim upon which relief can be granted and it was correct in dismissing the complaint.

As to Watkins's claim that his 1986 PFO conviction should be overturned, a civil action against the Governor is not the proper avenue to pursue that claim. We have not been provided with any of Watkins's criminal records; and therefore, we cannot comment on whether he previously followed the proper procedures in attacking his sentence.

For the foregoing reasons, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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<sup>8</sup> In re Sapp, 118 F.3d at 465.

<sup>9</sup> James, 95 S.W.3d at 883.

<sup>10</sup> See Withers v. University of Kentucky, 939 S.W.2d 340, 346 (Ky. 1997).

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