

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000760-MR

EUGENE BATES

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 04-CI-01577

JOHN MOTLEY AND JOHN D. REES

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, JOHNSON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Eugene Bates, an inmate at the Eastern Kentucky Correctional Complex, brings this *pro se* appeal from a March 7, 2005, order of the Franklin Circuit Court dismissing his petition for declaratory judgment seeking meritorious good-time credit that had been denied by the warden. The court dismissed the action for failure to state a claim for which relief can be granted under Ky. R. Civ. P. (CR) 12.02(f). We affirm.

On January 11, 2005, appellant filed a petition for declaratory judgment in the Franklin Circuit Court. Therein,

appellant alleged that he was improperly denied meritorious good-time credit, which can be earned by prisoners as a deduction from their sentence, not to exceed five days per month, for performing meritorious or outstanding service in programs at the prison. See KENTUCKY CORRECTIONS POLICY & PROCEDURE 15.3 at 501 Ky. Admin. Regs. 6:020 (2005).

Appellant was apparently denied meritorious good-time credit because he had failed to complete a sex offender treatment program. Kentucky Revised Statutes (KRS) 197.045 requires sex offenders to complete the sex offender treatment program before being awarded meritorious good-time credit. Appellant argues that he was convicted of rape in 1978 and that KRS 197.045 is limited in its application to sex offenders convicted after July 15, 1998. Appellant further argues that denial of meritorious good-time credit violated due process of law, constituted an unconstitutional ex post facto law, and violated the equal protection clause. On March 7, 2005, the circuit court entered an order dismissing appellant's petition under CR 12.02(f). This appeal follows.

Under CR 12.02(f), a complaint should be dismissed for failure to state a claim upon which relief can be granted only if it appears with certainty that claimant would not be entitled to relief under any set of facts that could be proved in support of the claim. Spencer v. Woods, 282 S.W.2d 851 (Ky. 1955). In

this Commonwealth, a prisoner has no vested right or reasonable entitlement to meritorious good-time credit under KRS 197.045(3). The awarding of meritorious good-time credit is a privilege and must be earned. Martin v. Chandler, 122 S.W.3d 540 (Ky. 2003). Additionally, it is well-established that "[t]he loss of the mere opportunity to earn good-time credit does not constitute a cognizable liberty interest." Marksberry v. Chandler, 126 S.W.3d 747, 753 (Ky.App. 2003). The law is clear that the loss of an opportunity to earn meritorious good-time credit does not implicate due process nor does it constitute an increase in punishment prohibited by the ex post facto clause. Martin v. Chandler, 122 S.W.3d 540 (Ky. 2003) and Anderson v. Parker, 964 S.W.2d 809 (Ky.App. 1997).

As to the equal protection claim, appellant has also failed to set forth any facts that would entitle him to relief thereunder. The awarding of meritorious good-time credit is within the sound discretion of the Kentucky Department of Corrections in accordance with the applicable regulations that were adopted pursuant to specific authority delegated by the legislature. Anderson, 964 S.W.2d 809. Simply stated, we believe that a prisoner's participation in the sexual offender treatment program may be a legitimate factor to consider in the determination of whether the prisoner should be awarded

meritorious good-time credit, regardless of when the sexual offense may have been committed.

Accordingly, we are of the opinion the circuit court did not commit error by dismissing appellant's petition for declaratory judgment under CR 12.02(f).

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

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Eugene Bates, *Pro Se*
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