

RENDERED: OCTOBER 27, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-002572-MR

DERRICK HARVEY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 05-CI-00067

COMMONWEALTH OF KENTUCKY,
JUSTICE AND PUBLIC SAFETY
CABINET

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: DIXON AND TAYLOR, JUDGES; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Derrick Harvey, *pro se*, appeals the order of the Franklin Circuit Court denying his petition seeking a declaration of rights that he is entitled to credit time spent on parole to his final discharge date under House Bill 269. We affirm.

Harvey was convicted of second degree robbery and imprisoned. He was granted parole on September 26, 2003. On

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

November 19, 2004, Harvey's parole was revoked for drug and alcohol use as well as two misdemeanor convictions. Harvey then filed his motion seeking entitlement to credit his time spent on parole towards his final discharge date. The trial court denied the motion and this appeal follows.

KRS 439.344 states that "[t]he period of time spent on parole shall not count as part of the prisoner's maximum sentence except in determining parolee's eligibility for a final discharge from parole as set out in KRS 439.354." Harvey relies on House Bill 269, which was passed in 2003 as part of a state budget bill. House Bill 269 contains the following language:

36. COMMUNITY SERVICES AND LOCAL FACILITIES

a. Probation and Parole Credit:

Notwithstanding KRS 439.344, the period of time spent on parole shall count as a part of the prisoner's unexpired sentence, when it is used to determine a parolee's final discharge as set out in KRS 439.354, or when a parolee is returned as a parole violator for a violation other than a new felony conviction.

2003 Ky.Acts, CH. 156, Part IX, item 36(a), p. 1876. House Bill 269 passed into law without the Governor's signature on March 23, 2003. 2003 Ky.Acts, Vol. II, p. 1912. As Harvey concedes, the law in effect at the time of his parole revocation was KRS 439.344. Despite Harvey's belief to the contrary, House Bill 269 did not permanently alter KRS 439.344 or other statutes on parole. KRS 446.145(1); Com. ex rel. Armstrong v. Collins, 709 S.W.2d 437 (Ky. 1986). Harvey also argues that the date parole

was granted should govern entitlement to the credit rather than the date of revocation. However, he cites no authority for this proposition. The language of the bill itself does not support this conclusion either because entitlement to the credit only takes effect at the time of revocation. More importantly, House Bill 269 expired on June 30, 2004, and was not extended by the General Assembly. Thereafter, it no longer existed as law. Since Harvey's parole was revoked after House Bill 269 expired, KRS 439.344 governs and he is not entitled to credit for time spent on parole.

Harvey makes various other constitutional challenges including an equal protection challenge. We will not address these challenges because of Harvey's failure to notify the Attorney General as required by KRS 418.075.

Accordingly, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Derrick Harvey, pro se
Lexington, Kentucky