

RENDERED: AUGUST 24, 2007; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000534-MR

RAYMOND LEE SPURGEON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 06-CI-00035

CORRECTIONS CABINET

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \*\* \*

BEFORE: STUMBO AND VANMETER, JUDGES; PAISLEY,<sup>1</sup> SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: This is an appeal from an Order and Opinion of the Franklin Circuit Court which rejected the appellant's claim that he has been wrongly classified by the Department of Corrections as a violent offender pursuant to KRS 429.3401. Finding no error, we affirm.

On February 17, 2004, Appellant pled guilty in the Jefferson Circuit Court to first degree Robbery and being a Persistent Felony Offender (PFO) in the first degree.

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

He was sentenced to 19 years on the robbery charge enhanced to 20 years by the PFO. The judgment is silent as to whether the victim suffered death or serious physical injury. The Department of Corrections has classified him as a violent offender, resulting in a requirement that he serve 85% of his sentence before he is eligible for parole. Appellant argues that the court's failure to designate in its judgment that the victim suffered death or serious physical injury means that he cannot be properly classified as a violent offender. We disagree.

In 2002, the legislature amended KRS 439.3401 to specifically include first degree robbery as a stand-alone violent offense. When Wathal pled guilty to first degree robbery, he automatically become a violent offender under the plain meaning of the statute. Accordingly, as the statute applies to Wathal, it reads: “[a]s used in this section, 'violent offender' means any person who has been convicted of or pled guilty to the commission of . . . [r]obbery in the first degree.” KRS 439.3401(1)(l).

*Wathal v. Harrod*, --- S.W.3d ---, 2007 WL 1804320 (Ky. App. June 22, 2007). The appellant in this case is in exactly the same situation as was Wathal in the cited case. “The statute requires the sentencing court to note whether death or serious physical injury occurred only if the crime is a Class B felony not otherwise delineated in the statute.” *Id.* Spurgeon was convicted of robbery in the first degree, making him a violent offender. His claim otherwise is without merit.

The judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Raymond L. Spurgeon, *pro se*  
Burgin, Kentucky

BRIEF FOR APPELLEE:

Karen S. Howard  
Frankfort, Kentucky