

RENDERED: FEBRUARY 1, 2008; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001170-MR

TERRELL WOOSLEY

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE WILLIAM L. GRAHAM, JUDGE  
ACTION NO. 05-CI-01592

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AFFIRMING

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BEFORE: KELLER AND VANMETER, JUDGES; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Terrell Woosley appeals the dismissal of his petition for writ of mandamus by the Franklin Circuit Court entered May 17, 2005. We affirm.

Woosley was found guilty and sentenced to prison on charges of robbery first degree (2 counts), trafficking in marijuana (1 count), and for being a persistent felony offender in the second degree. He was paroled on June 2, 2000. On April 27, 2004, he was returned to prison for violating his parole. A hearing was held on May 19,

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

2004, before the Kentucky State parole board which found that Woosley was guilty of violating the conditions of his parole, revoked his parole, and ordered a 72 month deferral on any further action by the board.

Woosley filed a petition for writ of mandamus in the Franklin Circuit Court on November 16, 2005. In his petition, Woosley alleges that the parole board's decision was based upon inadequate information, was arbitrary and capricious, and violated the principles of due process contained in the 14th Amendment of the U.S. Constitution and Section 2 of the Kentucky Constitution. He sought to have a writ issued ordering the parole board to review his case and all information necessary for a proper determination and reinstatement of his parole status.

Specifically, Woosley alleged that after he violated his parole in 2002, he entered into a new parole agreement with additional "special conditions" on October 7, 2002. He claims that by entering this new agreement any prior parole violations could not be used to revoke his parole. In fact, he had violated several of his original parole conditions and did sign a new conditions of supervision with the special conditions contained therein on October 7, 2002. However, there is nothing contained in the new agreement relative to previous violations not being used against him in the future or that only a violation of the listed special conditions would be cause for a parole violation.

Thereafter, on April 22, 2004, Woosley was returned to prison. A hearing was held on May 19, 2004, at which time the record indicates that he waived a preliminary parole revocation hearing and admitted guilt. His parole was revoked based

upon his receiving a misdemeanor conviction of assault fourth degree and technical violations of leaving the area of supervision without permission, use of a controlled substance (methamphetamine), possession of alcohol (2 counts), and visiting a penal institution without permission.

On May 4, 2006, the parole board filed a motion to dismiss Woosley's petition in the Franklin Circuit Court. The board contended in its motion that the petition failed to state a claim upon which relief could be granted. It further argued that Woosley's contention that his other violations would not trigger a revocation hearing since he had not violated any of the "special conditions" listed in his parole agreement was absurd. The parole board added that Woosley had been given notice and an opportunity to be heard and that due process had been met. *See Morrissey v. Brewer*, 408 U.S. 471 (1972). The circuit court agreed and on May 17, 2006, entered an order dismissing Woosley's petition with prejudice. This appeal followed.

On appeal, Woosley argues that the Commonwealth violated its agreement with him not to revoke his parole unless he violated one of the "special conditions" set forth in the October 7, 2002, conditions of supervision. The parole board has not filed an appellate brief in this matter. Woosley cites to several cases that state that the Commonwealth and its agents are bound by their agreements with defendants. While the principle argued by Woosley is correct, it has no application in this case. On its face the agreement the probation and parole officer and Woosley entered into clearly listed numerous general conditions of his parole as well as the special conditions applicable

only to Woosley. While Woosley may not have violated a listed “special condition,” he admitted to his violation of the more general conditions contained in the very agreement he argues is applicable to revocation. As such, his claims that his rights were violated and that there was insufficient evidence is without merit. Woosley was given adequate notice of the reasons for his parole revocation and was given an opportunity to be heard and to present any defenses he may have had. At the hearing, he admitted to a new conviction and four additional violations of his parole conditions. The parole board acted properly in revoking Woosley's parole and the circuit court properly dismissed his petition for writ of mandamus.

For the foregoing reasons, the order of the Franklin Circuit Court entered May 17, 2006, dismissing Woosley's petition is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE:

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