

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-001240-MR

GEORGE ROBERSON

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 18-CI-00167

RANDY WHITE, WARDEN,
KENTUCKY STATE PENITENTIARY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, GOODWINE AND LAMBERT, JUDGES.

COMBS, JUDGE: Appellant, George Roberson (Roberson), appeals from an order of the Lyon Circuit Court dismissing his petition for declaratory judgment. After our review, we affirm.

This case arises from prison disciplinary proceedings charging Roberson with inappropriate behavior. He was found guilty following a

disciplinary hearing on November 6, 2017, and was penalized with a period of disciplinary segregation. Roberson appealed to the Warden, who concurred with the Adjustment Committee's decisions by Warden's reviews dated December 7, 2017.

On December 28, 2018, Roberson filed a petition for declaration of rights in Lyon Circuit Court.¹ Appellee filed a response and motion to dismiss and argued, *inter alia*, that the action was barred by the one-year statute of limitations in KRS² 413.140. By an order entered June 3, 2019, the circuit court entered an order dismissing the petition, reciting that the matter was dismissed for "failure to state a claim upon which relief can be granted for the reasons stated by Respondents. CR³ 12.02(f)."

Roberson appealed, contending that the circuit court erred in not finding that he was entitled to relief. Appellee argues that the circuit court properly dismissed Roberson's petition because it was untimely filed more than one year after the date of the Warden's reviews.

KRS 413.140 provides in relevant part that:

¹ "A petition for declaratory judgment pursuant to KRS 418.040 has become the vehicle, whenever Habeas Corpus proceedings are inappropriate, whereby inmates may seek review of their disputes with the Corrections Department." *Smith v. O'Dea*, 939 S.W.2d 353, 355 (Ky. App. 1997).

² Kentucky Revised Statutes.

³ Kentucky Rules of Civil Procedure.

(1) The following actions shall be commenced within one (1) year after the cause of action accrued:

...

(k) An action arising out of a detention facility disciplinary proceeding, whether based upon state or federal law;

...

(7) In respect to the action referred to in paragraph (k) of subsection (1) of this section, the cause of action shall be deemed to accrue on the date an appeal of the disciplinary proceeding is decided by the institutional warden.

In the case before us, Roberson’s petition is date-stamped “FILED” on December 28, 2018; it was untimely filed more than one year after the Warden’s decisions, which were dated December 7, 2017. The circuit court properly dismissed the petition.⁴

Accordingly, we AFFIRM the order of June 3, 2019, of the Lyon Circuit Court dismissing the petition.

ALL CONCUR.

⁴ Roberson’s petition was not dated; however, he also filed a motion to proceed *in forma pauperis* on December 28, 2018, which, according to the certificate of service, was mailed on December 7, 2018. Even were we to assume that Roberson’s petition was also mailed on December 7, 2018, “the prison mailbox rule and RCr [Kentucky Rules of Criminal Procedure] 12.04(5) only apply to criminal matters and will not operate to save an inmate’s civil petition for declaration of rights.” *Lee v. Haney*, 517 S.W.3d 500, 505 (Ky. App. 2017).

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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