

RENDERED: APRIL 22, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000973-MR

BOBBY JOE MCGINNIS

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 04-CI-00071

JAMES MORGAN

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Bobby Joe McGinnis brings this pro se appeal from a March 29, 2004, order of the Boyle Circuit Court denying his petition for declaration of rights seeking restoration of two years good time credit. We affirm.

Appellant was an inmate at Northpoint Training Center. In 1997, appellant was found guilty of attempted sexual assault at a prison disciplinary hearing. On May 8, 1997, he was

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

penalized with 180 days of segregation and with forfeiture of two years non-restorable good time credit. On June 10, 1997, the warden concurred with the adjustment officer's decision because appellant failed to file a written appeal within the 15 day time limit of Kentucky Correction Policies and Procedures No. 15.6.

Some six years after the warden's decision, appellant filed a petition for declaration of rights in the Boyle Circuit Court. Therein, he claimed to have been erroneously adjudicated guilty of attempted sexual assault and that the loss of his good time credit amounted to a "violation of due process of law and equal protection rights under . . . the Commonwealth of Kentucky pursuant to Sections 1, 2, and 3 Kentucky Const., and the Fourteenth U.S. Constitution." By order entered March 29, 2004, the Boyle Circuit Court dismissed appellant's petition as being time barred by Kentucky Revised Statutes (KRS) 413.140(1)(k). This appeal follows.

Appellant contends the circuit court committed error by dismissing his petition for declaration of rights as time barred.

KRS 413.140(1)(k) states as follows:

(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.

Subsection (1)(k) was added by legislative amendment effective July 15, 2002. Hence, we harbor grave doubt concerning the applicability of subsection (1)(k) to the instant case.

We are guided by the recent Supreme Court decision of Million v. Raymer, 139 S.W.3d 914 (Ky. 2004). In that case, Raymer had been found guilty by a prison disciplinary committee in January 1999. Raymer subsequently appealed the decision to the warden, and the warden affirmed the "conviction" on April 15, 1999. On June 1, 2000, Raymer filed a petition for declaration of rights in the Morgan Circuit Court claiming that his due process rights under the 14th Amendment of the United States Constitution were violated.

In Million, the issue before the Supreme Court was whether Raymer's petition for declaration of rights was time barred. In answering this question, the Supreme Court noted that KRS 413.140 was amended in 2002 by adding subsection (1)(k) so as to specifically include within its ambient prison disciplinary proceedings. However, the Court declined to apply KRS 413.140(1)(k). Instead, the Court held that a petition for declaration of rights alleging violation of an inmate's federal constitution due process rights in a prison disciplinary proceeding is governed by a one year limitation period for

personal injury actions under KRS 413.140(1)(a). This holding is necessarily limited to prison disciplinary proceedings occurring before July 15, 2002; the effective date of the amendment to KRS 413.140 adding subsection (1)(k). In dicta, the court also implied that a petition for declaration of rights alleging a violation of state created rights or violation of state law would be subject to five year limitation period of KRS 413.120(2).

Applying the principles of Million to this case, we hold that appellant's petition for declaration of rights is time barred by application of either KRS 413.140(1)(a) or by KRS 413.120(2). See id. Hence, the circuit court properly dismissed appellant's petition for declaration of rights.

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

ALL CONCUR.

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