

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001450-MR

ANDREA L. DAVIS

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 08-CI-01928

KENTUCKY DEPARTMENT
OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: FORMTEXT TAYLOR, CHIEF JUDGE; DIXON, JUDGE; HENRY,
SENIOR JUDGE.

TAYLOR, CHIEF JUDGE: Andrea L. Davis brings this *pro se* appeal from a July
23, 2009, order of the Franklin Circuit court dismissing his petition for declaratory
judgment. We affirm.

Davis filed a petition for declaratory judgment in the Franklin Circuit Court. Therein, Davis asserted that the Kentucky Department of Corrections improperly failed to admit him into the Sex Offenders Treatment Program (SOTP) and failed to provide him a parole date in regard to certain nonsexual offenses. The circuit court dismissed the petition, and this appeal follows.

In dismissing Davis's petition, the circuit court reasoned:

Having considered the argument raised by the petition in his response, the Court re-affirms its original findings that [Davis] has failed to state a claim upon which relief can be granted. [Kentucky Rules of Civil Procedure] CR 12.06. Under KRS 197.410(2), the Department of Corrections has discretion as to admission into the sex offender treatment program, there is no vested right to participate in that program. *Seymour v. Colebank*, 179 S.W.3d 886 (Ky. App. 2006). Likewise, eligibility for parole is a privilege and not a right. . . .

We agree with the circuit court.

This Court will not review prisoner's complaints concerning parole eligibility. It has been held that "there is no constitutional right to parole, but rather parole is a matter of legislative grace or executive clemency." *Land v. Com.*, 986 S.W.2d 440, 442 (Ky. 1999). Indeed, the Supreme Court recognized that "so long as the conditions or the degree of confinement to which the prisoner is subjected do not exceed the sentence which was imposed and are not otherwise in violation of the Constitution, the due process clause of the Fourteenth Amendment does not subject an inmate's treatment by prison authorities to judicial oversight." *Mahoney v. Carter*, 938 S.W.2d 575, 576 (Ky. 1997); *See Seymour v.*

Colebank, 179 S.W.3d 886 (Ky. App. 2005). Accordingly, we conclude that the circuit court properly dismissed Davis's petition for declaration of rights.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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