

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-001805-MR

LARRY E. WATKINS

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE PHILLIP J. SHEPHERD, JUDGE  
ACTION NO. 08-CI-01891

LADONNA THOMPSON, COMMISSIONER;  
ROB HOWERTON, WARDEN; AND LT.  
ROBINSON, INTERNAL AFFAIRS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: MOORE AND THOMPSON, JUDGES; WHITE,<sup>1</sup> SENIOR JUDGE.

THOMPSON, JUDGE: Larry E. Watkins appeals from the order of the Franklin Circuit Court dismissing his complaint for a writ of mandamus against prison officials. For the reasons stated herein, we affirm.

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

On November 18, 2008, Watkins filed a complaint for the issuance of a writ of mandamus against prison officials. He alleged that prison officials were intentionally and incorrectly classifying him as a gang member. According to his complaint, prison officials filed documentation into his inmate record certifying that he was a member of a gang. Contending that he was not a gang member, he argued that this classification constituted unlawful retaliation against his past use of the grievance process. He requested that the trial court order prison officials to remove this information from his file.

On December 29, 2008, the defendants filed a response and motion to dismiss Watkins's complaint. In their motion, the defendants argued that Watkins was a self-admitted member of the Moorish Science Temple of America-Branch No. 43. Citing a Department of Corrections Security Threat Group Information Report, the defendants contended that Watkins's group had a history of advocating resistance to the lawful authority of prison officials through the use of violence. Thus, they argued that Watkins was clearly a member of a security threat group.

In its motion, the defendants further contended that Watkins suffered no harm as a result of his classification as a member of a security threat group. They argued that Watkins's classification did not prevent him from being granted parole twice or prevent him from receiving meritorious good-time. Moreover, they stated that Watkins had moved to lower security prisons, which were

presumably more desirable. Based on the record, the defendants argued that Watkins was not entitled to a writ of mandamus.

On January 8, 2009, the trial court issued an order dismissing Watkins's complaint. The trial court ruled that Watkins's complaint failed to state a claim for which relief can be granted. This appeal followed.

Watkins contends that the trial court abused its discretion when it summarily dismissed his complaint because he was entitled to have the false and slanderous information removed from his inmate record. He contends that his group was only labeled a security threat because of the racism of prison officials. Stating that Sections Two and Four of our Kentucky Constitution prohibit arbitrary conduct by the state and its agents, he argues that he should have been granted a writ of mandamus to prohibit prison officials from engaging in arbitrary conduct.

CR 12.02(f) provides that the failure to state a claim upon which relief can be granted is a sufficient ground for dismissal of a claim. When a motion to dismiss is made, trial courts cannot grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim. *Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). "In determining whether a complaint should be dismissed, the issue is a matter of law." *Grand Communities, Ltd. v. Stepner*, 170 S.W.3d 411, 417 (Ky.App. 2004).

A writ of mandamus functions to compel an official to perform official duties where an element of discretion does not occur, but this writ cannot

be used to usurp legislative powers or invade the functions of an independent branch of government. *County of Harlan v. Appalachian Regional Healthcare, Inc.*, 85 S.W.3d 607, 612 (Ky. 2002). Thus, it has been held that “[m]andamus is an appropriate remedy to compel an inferior court or administrative body to adjudicate on a subject within its jurisdiction where it neglects or refuses to do so, but not an appropriate remedy to tell the court or administrative body how to decide or to interfere with its exercise of discretion.” *Humana of Kentucky, Inc. v. NKC Hospitals, Inc.*, 751 S.W.2d 369, 374 (Ky. 1988).

In this case, after the Department of Corrections conducted an investigation, it determined that Watkins and his group were a security threat to prison officials because they advocated resisting prison officials’ lawful authority. This Court has stated that the Department has been authorized by the Legislature to establish governance and discipline at our penitentiaries. *Watkins v. Fannin*, 278 S.W.3d 637, 641 (Ky.App. 2009). Here, the Department decided to classify Watkins and his group as a security threat. Clearly, their decision was made for prison safety concerns rather than racial or religious animus. Therefore, we will not disturb the exercise of the Department’s discretion. Accordingly, we conclude that the trial court did not err by dismissing Watkins’s complaint.

For the foregoing reasons, the order of the Franklin Circuit Court dismissing Watkins’s complaint is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Larry E. Watkins, *Pro Se*  
Beattyville, Kentucky

BRIEF FOR APPELLEE:

No brief filed.