

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-001071-MR

LESLIE SMITH

APPELLANT

APPEAL FROM MUHLENBERG CIRCUIT COURT  
v. HONORABLE BRIAN WIGGINS, JUDGE  
ACTION NO. 10-CI-00190

NANCY DOOM, WARDEN,  
GREEN RIVER CORRECTIONAL  
COMPLEX; SGT. BILLY HERRIN,  
ADJUSTMENT OFFICER; AND DEBRA  
BANKS, INTERNAL AFFAIRS,  
GREEN RIVER CORRECTIONAL  
COMPLEX

APPELLEES

OPINION  
AFFIRMING

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BEFORE: NICKELL AND VANMETER, JUDGES; SHAKE,<sup>1</sup> SENIOR JUDGE.

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<sup>1</sup> Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

VANMETER, JUDGE: Leslie Smith appeals *pro se* from an order of the Muhlenberg Circuit Court dismissing his action for failure to comply with KRS 454.410. For the following reasons, we affirm.

Smith filed a civil suit seeking relief from an administrative punishment imposed as a result of a prison disciplinary action which took place while he was an inmate at Green River Correctional Complex. The trial court dismissed this action by order dated May 10, 2010 on the basis that Smith failed to comply with KRS 454.410(1) and (2) concerning payment of fees and court costs by inmates. Smith filed a motion for reconsideration, which the court denied.

Smith then filed a motion to proceed *in forma pauperis* on appeal. The court entered an amended order dated May 26, 2010, noting that its previous finding that Smith failed to comply with KRS 454.410(1) was incorrect. Nonetheless, the court ordered that its previous order dismissing the action remained in full force and effect since Smith failed to pay the requisite filing fee as required by KRS 454.410(2). By separate order also dated May 26, 2010, the court ordered Smith to pay \$20 toward the filing fee for an appeal within ten days of entry of the order pursuant to CR<sup>2</sup> 5.05(4). Thereafter, by order dated June 4, 2010, the court found that Smith had satisfied the filing fee requirement set forth in KRS 454 and ordered that he may proceed on appeal *in forma pauperis*.

On appeal, Smith claims he was denied his rights of due process, the evidence presented was unreliable and insufficient to support a conviction, and

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<sup>2</sup> Kentucky Rules of Civil Procedure.

prison authorities failed to establish a proper chain of custody for the evidence. However, irrespective of the merits of Smith’s allegations, KRS 454.415 precludes this court’s review of the matter since the record reflects that Smith did not meet his burden of proving that he had exhausted his administrative remedies as required under the statute. *See McCloud v. Commonwealth*, 286 S.W.3d 780, 786 n19 (Ky. 2009) (an appellate court may affirm a lower court for any reason supported by the record).

KRS 454.415 sets forth the following restrictions on an inmate’s filing of a civil action:

(1) No action shall be brought by or on behalf of an inmate, with respect to:

(a) An inmate disciplinary proceeding;

...

until administrative remedies as set forth in the policies and procedures of the Department of Corrections . . . are exhausted.

....

(3) The inmate shall attach to any complaint filed documents verifying that administrative remedies have been exhausted.

An inmate’s failure to raise an issue before an administrative body “precludes a litigant from asserting that issue in an action for judicial review of the agency’s action.” *O’Dea v. Clark*, 883 S.W.2d 888, 892 (Ky.App.1994) (citing *Personnel Bd. v. Heck*, 725 S.W.2d 13 (Ky.App. 1986)). In this case, Smith did

not attach any documents to his complaint or otherwise present any proof verifying that he pursued an administrative appeal and raised certain issues so as to demonstrate exhaustion of administrative remedies as required by KRS 454.415. As a result, this action was properly dismissed.

The order of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Leslie Smith, *Pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

No appellee brief filed.