

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-002416-MR

JOHN M. PRICE, JR.

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE PHILLIP J. SHEPHERD, JUDGE  
ACTION NO. 09-CI-00453

DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT AND STUMBO, JUDGES; SHAKE,<sup>1</sup> SENIOR JUDGE.

STUMBO, JUDGE: John M. Price, Jr. appeals from an Order of the Franklin Circuit Court dismissing his petition seeking a Writ of Mandamus. Price, who is incarcerated at the Northpoint Training Center, argues that the Department of

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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.

Corrections violated his Due Process and Equal Protection rights by improperly depriving him of good time credit. He appears to maintain that he is entitled to good time credit earned while on parole for 1,995 days. We find no error in the dismissal of his petition, and accordingly affirm.

On March 19, 2009, Price, who was incarcerated on a parole violation, filed a *pro se* petition in Franklin Circuit Court seeking a Writ of Mandamus. In support of the petition, Price claimed that the Department of Corrections failed to adhere to the mandatory sentencing language of KRS 431.215, KRS 532.100(7) and HB 406. As best we can tell from examining the petition and the record, it appears that Price maintained that he was entitled to a credit of 1,995 days toward his sentence for time spent on parole. The Franklin Circuit Court action was preceded by Price exhausting his administrative remedies.

During the pendency of the circuit court action, Price was transferred to the Northpoint Training Center. On September 8, 2009, the Department of Corrections filed a motion to dismiss the petition. In support of the motion, the Department claimed that Price had been awarded 1,995 days of sentencing credit on February 4, 2009, of which Price apparently was not aware when he filed the petition. In support of this claim, the Department tendered Price's Resident Record Card, which the Department claimed demonstrated that Price received the 1,995 days of sentencing credit at issue, and as provided for by HB 406.

On September 8, 2009, the Franklin Circuit Court rendered an Order dismissing Price's petition as moot. This appeal followed.

Price now argues that the Franklin Circuit Court erred in dismissing as moot his petition seeking a Writ of Mandamus. He maintains that the circuit court erred in failing to conclude that the Department of Corrections violated his Due Process and Equal Protection rights by denying him an award of *good time credit* (as opposed to credit toward his sentence) as required by statute. He also argues that the court erred in dismissing his petition “without a basis of facts being established.”

Having closely examined the record and the law, we find no error. The petition seeking a Writ of Mandamus sought sentencing credit for time when Price was on parole. That credit was based on HB 406, more commonly known as the “budget bill” for the biennium beginning on July 1, 2008.<sup>2</sup> It states that,

Notwithstanding KRS 439.344, the period of time spent on parole shall count as a part of the prisoner’s remaining unexpired sentence when it is used to determine a parolee’s eligibility for a final discharge from parole as set out in subsection (5) of this section or when a parolee is returned as a parole violator for a violation other than a new felony conviction.

In support of its motion to dismiss, the Department of Corrections tendered proof in the form of Price’s Resident Record Card that he had received 1,995 days counted toward his remaining sentence. Persuaded by this proof, and because Price had been transferred from the Fayette County Detention Center during the

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<sup>2</sup> In 2008, the Kentucky General Assembly enacted HB 406 - the Commonwealth’s biennial budget - and Governor Beshear signed it into law. Part I, Section I (5)(c)(4)-(5) of HB 406 is set out in 2008 Ky. Acts ch. 127.

pendency of the action, the circuit court was persuaded that Price's petition was moot.

On appeal, Price now raises a *new* argument, to wit, that he was improperly denied good time credit (as opposed to sentence credit under HB 406) based on the 1,995 days he spent on parole. We are persuaded by the Department's contention that this argument was not raised below and is not preserved for appellate review. Price's petition for a Writ of Mandamus does not raise or otherwise address any issue of good time credit, and there is nothing in the circuit court record on this issue. The circuit court made no ruling relating to good time credit. Our review is limited to issues which were raised in and ruled upon by the trial court. *Commonwealth v. Maricle*, 15 S.W.3d 376 (Ky. 2000). Price did not raise the issue of good time credit before the circuit court, and as such, we are without the authority to examine it *de novo*. *Arguendo*, even if this matter were properly before us, we would find no error. The award of good time credit is discretionary. KRS 197.045(1).

The record demonstrates that the Department of Corrections tendered proof that Price was awarded 1,995 days of credit toward his sentence as required by HB 406. This proof provides a reasonable basis for the Franklin Circuit Court's September 8, 2009 Order dismissing Price's petition as moot. Accordingly, we find no error.

For the forgoing reasons, we affirm the Order of the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

John M. Price, Jr., *pro se*  
Burgin, Kentucky

BRIEF FOR APPELLEE:

Jonathan S. Milby  
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