

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000044-MR

PAUL KORDENBROCK

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 13-CI-01392

J. MICHAEL BROWN, SECRETARY, JUSTICE CABINET;
VERMAN RAY WINBURN, CHARIMAN,
COMMONWEALTH OF KENTUCKY PAROLE BOARD;
COMMONWEALTH OF KENTUCKY PAROLE BOARD;
JUSTICE AND PUBLIC SAFETY CABINET,
OFFICE OF LEGAL SERVICES; AND JACK CONWAY,
ATTORNEY GENERAL OF KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, KRAMER AND STUMBO, JUDGES.

STUMBO, JUDGE: Appellant appeals, *pro se*, from an order denying his petition for a declaration of rights. Appellant argues that by ordering him to serve out his sentence, the Kentucky Parole Board has impermissibly changed his sentence from

life with the possibility of parole to life without the possibility of parole. Appellant also raises some procedural issues. We find no error and affirm.

In 1981, Appellant pled guilty to two murders and was sentenced to life with the possibility of parole. In 1991, Appellant pled guilty to another murder charge and was sentenced to life with the possibility of parole. In September of 1991, Appellant appeared before the Kentucky Parole Board, but was denied parole. In January of 1992, Appellant again appeared before the Parole Board. He was again denied parole and the Parole Board ordered that he not be considered for parole again for 12 years. In January of 2004, Appellant once again appeared before the Parole Board. The Parole Board denied parole and ordered that Appellant serve out his sentences.

On November 12, 2013, Appellant filed the current declaration of rights action. He argued that by ordering him to serve out the remainder of his sentence, the Parole Board impermissibly changed his sentences from life with the possibility of parole to life without the possibility of parole. A number of procedural issues concerning service of process and the serving of pleadings caused some delays in this action. On December 9, 2014, the trial court entered an order denying Appellant's petition for declaration of rights based on *res judicata*. This appeal followed.

Appellant raises a number of arguments on appeal; however, the crux of this appeal concerns whether the Parole Board can order Appellant to serve out

his sentence and no longer consider him for parole. We agree with the trial court that this claim is barred by *res judicata*.

Causes of action “may not be split and tried piecemeal.” *Egbert v. Curtis*, 695 S.W.2d 123, 124 (Ky. App. 1985). Stated another way, *res judicata* is applicable “not only to the issues disposed of in the first action, but to every point which properly belonged to the subject of the litigation in the first action and which in the exercise of reasonable diligence might have been brought forward at the time.” *Id.* (citation omitted). “Substantively, *res judicata* applies to bar consideration of a claim that was, or could have been, brought in prior litigation between the parties.” *Bowling v. Kentucky Dep't of Corrections*, 301 S.W.3d 478, 486 (Ky. 2009) (emphasis added).

Appellant has previously brought a petition for declaration of rights. In the earlier action, he argued that “the Parole Board’s decision to require him to serve out his sentence of imprisonment without future parole consideration violated the constitutional protections of equal protection, due process of law, prohibition against *ex post facto* laws, and amounted to breach of contract.” *Kordenbrock v. Kuster*, No. 2008-CA-002216-MR, 2009 WL 2569202, at 1 (Ky. App. 2009). The trial court denied his petition and a prior panel of this Court affirmed.

While the arguments raised in this current appeal are not identical to the previous case, they are very similar. Additionally, the current arguments could have been raised in the prior declaration of rights case. The trial court correctly denied Appellant’s petition pursuant to *res judicata*.

Even if Appellant's claims were not barred by *res judicata*, we believe he would still not prevail on his petition. The argument currently being made by Appellant has been heard by another panel of this Court. In *Cavender v. Mudd*, No. 2008-CA-001988-MR, 2009 WL 2835173, at 2 (Ky. App. 2009), Emory Cavender was given a life sentence with the possibility of parole.¹ After his first hearing before the Parole Board, his request for parole was denied and he was ordered to serve out the remainder of his sentence. He then brought an action arguing that the "Parole Board improperly superseded the jury's decision to sentence him to life in prison with a 'possibility of parole' by denying his request for parole and by ordering him to serve out the remainder of his sentence." *Id.* at 1.

The panel of this Court which eventually heard his case determined that the Parole Board did not act contrary to law. The Court stated that

Kentucky law clearly reflects that under the circumstances at hand an inmate is entitled to only one initial review for parole. Whether to allow for another review in the future or to order a serve-out is a decision fully within the sound discretion of the Parole Board—even in instances involving life sentences. Thus, the Parole Board did not act contrary to law by ordering Cavender to serve out the remainder of his sentence once it denied his request for parole.

Id. at 2 (citation omitted).

In the case at hand, Appellant was able to request parole three times before ultimately being ordered to serve out the remainder of his sentence. We find the

¹ This unpublished case is being cited pursuant to Kentucky Rule of Civil Procedure (CR) 76.28(4)(c).

reasoning set forth in *Cavender* persuasive. Appellant was only entitled to one review for parole.

Based on the foregoing, we find no error and affirm the trial court's judgment.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Paul Kordenbrock, *pro se*
Eddyville, Kentucky

BRIEF FOR APPELLEE JUSTICE
AND PUBLIC SAFETY CABINET:

John Cummings
Frankfort, Kentucky