RENDERED: AUGUST 19, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001384-MR

CORNELIUS HILL — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 15-CI-00570

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, LAMBERT, D., AND NICKELL, JUDGES.

CLAYTON, JUDGE: Cornelius Hill, *pro se*, appeals the August 14, 2015 opinion and order of the Franklin Circuit Court granting the Department of Corrections' motion to dismiss Hill's petition for injunctive relief under Kentucky Rules of Civil Procedure (CR) 65.01. The trial court dismissed the petition for failure to state a claim. After careful consideration, we affirm.

Hill is an inmate at the Kentucky State Reformatory. On September 25, 2013, Hill pled guilty, in the Ballard Circuit Court, to first degree sexual abuse under Kentucky Revised Statutes (KRS) 510.110 and to three other misdemeanor charges. He received a six-year prison sentence.

On June 3, 2015, Hill filed a CR 65.01 petition for injunctive relief in Franklin Circuit Court requesting that it grant a restraining order against the Department of Corrections requiring the Department to refrain from classifying him as a violent offender or a sexual offender and from imposing the statutory requirements of post-incarceration supervision because the sentencing court did not mention these statutory requirements in its judgment of conviction. *See* KRS 439.3401; KRS 532.043; KRS 17.510; and, KRS 17.170.

Prior to filing for injunctive relief, he sought relief through the administrative offices of the Department of Corrections. In response, the Department of Corrections filed a motion to dismiss, pursuant to CR 12, for failure to state a claim. Hill appeals from the grant of the motion to dismiss and the denial of his motion for injunctive relief.

As previously noted, the sole basis of Hill's argument is that the sentencing court did not expressly state in its judgment of conviction that these statutory requirements applied to him. The Franklin Circuit Court denied the petition and granted the Department of Corrections' motion to dismiss. It reasoned that the judiciary has no discretion to waive these statutorily-imposed, post-

conviction supervision requirements, and hence, Hill's petition failed to state a claim for which relief could be granted.

On appeal, Hill maintains that the Franklin Circuit Court erred in its determination that these sentencing requirements are statutorily mandated and it has no jurisdiction to waive them. The Department of Corrections counters that the trial court correctly dismissed the motion because the conditions apply upon convictions regardless of whether they are stated in the sentence.

The appellate standard for review of the grant of a motion to dismiss requires that a pleading must be construed in a light most favorable to plaintiff and all allegations taken as true. *Mims v. Western–Southern Agency, Inc*., 226 S.W.3d 833, 835 (Ky. App. 2007). A motion to dismiss should not be granted "unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved[.]" *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010). Moreover, "[s]ince a motion to dismiss for failure to state a claim upon which relief may be granted is a pure question of law, a reviewing court owes no deference to a trial court's determination; instead, an appellate court reviews the issue de novo." *Id*.

Hill pled guilty to the commission of a felony sexual offense as described in KRS Chapter 510. Specifically, he admitted to first degree sexual abuse as found in KRS 510.110. As authorized by KRS 439.3401(1), any person who pleads guilty or is convicted of the commission of or attempted commission of a felony sexual offense under KRS Chapter 510 is classified as a "violent

offender." Since Hill pled guilty to an offense under KRS Chapter 510, KRS 439.3401 applies to him. The language of the statute is mandatory and provides no authority for the judiciary to remove its application.

In addition, "any person convicted of, pleading guilty to, or entering an *Alford* plea to a felony offense under KRS Chapter 510 . . . shall be subject to a period of post-incarceration supervision." KRS 532.043(1). Again, the language of the statute is mandatory and gives the judiciary no authority to waive the requirement.

Moreover, because Hill is classified as a violent offender, he is also subject to KRS 17.510(2):

> A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.

Further, "[a]ny person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state . . . shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section." KRS 17.510(6). Subsection 4 spells out that the local probation and parole office shall "obtain the person's fingerprints, DNA sample,

and photograph." KRS 17.510(4). KRS 17.170 merely codifies the requirement for a DNA collection for persons subject to KRS 17.510. Once again, the language is mandatory and lacks any authority for the judiciary to ignore it.

Hill maintains that he was not sentenced by the trial court to register as a sexual offender, and therefore, does not have to comply. He is mistaken. The trial court does not sentence any one to register as a sex offender. Rather, the registration is prescribed by the statute and is ancillary to the listed crimes requiring registration as a sex offender. The requirements apply by operation of law and the judiciary has no authority or discretion to waive them. This conclusion was supported by the Kentucky Supreme Court in *Benet v. Commonwealth*, 253 S.W.3d 528 (Ky. 2008), when it stated "a defendant automatically becomes a violent offender at the time of his or her conviction of an offense specifically enumerated in KRS 439.3401(a) regardless of whether the final judgment of conviction contains any such designation."

Therefore, logically, if one is convicted of a sex crime, he or she must register as a sexual offender. Conversely, if one is not convicted of a sex crime, he or she does not have to register as a sexual offender. The criminal convictions or guilty pleas requiring registration for sex crimes are found in KRS 17.500(8).

For the aforementioned reasons, the decision of the Franklin Circuit Court is affirmed.

ALL CONCUR

BRIEF FOR APPELLANT:

Cornelius Hill, *pro se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Alea Amber Arnett
Frankfort, Kentucky