

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000215-MR

DANNY R. MATTHEWS

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE STEPHEN M. SHEWMAKER, JUDGE
ACTION NO. 98-CI-00277

DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, COMBS, AND McANULTY, JUDGES.

BARBER, JUDGE: Danny R. Matthews (Matthews) appeals pro se from an order of the Boyle Circuit Court dismissing his petition for declaration of rights filed pursuant to Kentucky Revised Statute (KRS) 418.040, which challenged certain prison disciplinary rules as unconstitutional. After reviewing the record, we affirm.

In 1996, corrections officers at the Luther Lockett Correctional Complex found several documents in Matthews's prison cell; one listed names of other prison inmates next to various goods with remarks such as paid or dead, and another listed football games and relevant point spreads. Matthews was charged

with violating Corrections Policies and Procedures (CPP) 15.2, Category V-4, which prohibited loansharking or collecting or incurring debts. After an administrative hearing in October 1996, the prison adjustment committee found Matthews guilty and assessed various penalties including the loss of good time credits.

In July 1997, Matthews filed a petition for declaration of rights in Franklin Circuit Court challenging the prison disciplinary action. On July 17, 1997, the circuit court entered an order dismissing the petition finding that the adjustment committee's action was proper and supported by "an enormous amount of evidence" indicating that Matthews had engaged in the prohibited conduct. Furthermore, citing KRS 454.405, the court specifically held that the petition was "legally without merit," but it declined to impose any fine or sanction.

In August 1997, Matthews was charged with violating CPP 15.2, Category D, which provided for penalties consisting of forfeiture of 180 days of non-restorable good time for filing a civil action that results in dismissal by a court based on a finding that is, inter alia, without merit. Following a hearing on August 11, 1997, the prison adjustment committee found Matthews guilty and assessed a penalty of loss of 180 days non-restorable good time.

On July 22, 1998, Matthews filed a 44-page petition for declaratory judgment challenging KRS 197.045(5), under which CPP 15.2, Category D was promulgated, and CPP 15.2, Category D, as unconstitutional under the 1st, 5th and 14th Amendments of the

United States Constitution and Sections 1, 2, 3, 11, 13, 27, 28, 51, 112 and 115 of the Kentucky Constitution. The Department of Corrections filed a response disputing Matthews's complaints and requesting dismissal for failure to state an actual controversy. On December 28, 1998, the circuit court issued a 1½ page order finding that Matthews had failed to establish that the statute and prison regulation were unconstitutional and dismissing the petition. On January 6, 1999, Matthews filed a motion for reconsideration that also included a request for specific findings of fact under CR 52.04. The circuit court summarily denied the motion and this appeal followed.

Matthews raises several constitutional challenges to both the statute, KRS 197.045(5), and the prison regulation, CPP 15.3, Category D, dealing with dismissal of civil actions by prison inmates for filing frivolous lawsuits. First, he contends that both the statute and the prison regulation violate due process under the 5th and 14th Amendments and Sections 2, 3 and 11 of the Kentucky Constitution because they are unconstitutionally void for vagueness. Second, he claims the trial court's failure to enter specific findings of fact and conclusions of law on each of the individual issues he raised in his petition denied him due process and equal protection because it effectively denied him access to the courts. Third, he argues that both the statute and the prison regulation violate Sections 27 and 28 of the Kentucky Constitution dealing with the separation of powers. Fourth, Matthews maintains that application of CPP 15.2, Category D, to him exceeds the statutory

authority granted in KRS 197.045(5). Fifth, Matthews asserts that KRS 13B.020(3)(d)(2)(b), which exempts prison disciplinary hearings from the general state procedures for administrative hearings in Chapter 13B, violates the equal protection clause of the 14th Amendment and Sections 112 and 115 of the Kentucky Constitution by effectively denying his right to one direct appeal to a judicial court.

We begin by addressing Matthews's fifth argument involving denial of his right to one direct appeal. This argument is based on several erroneous propositions. KRS 13B.020(3)(d)(2)(b) exempts from Chapter 13B, "Prison adjustment committee hearings conducted under authority of KRS Chapter 197." KRS 197.020(1)(a) authorizes the Department of Corrections "to formulate and prescribe all necessary regulations and bylaws for the government and discipline of the penitentiary, [and] the rules for the government and official conduct of all officials connected with the penitentiary. . . ." KRS 197.045 provides for the awarding of good time credit based on inmate compliance with prison disciplinary regulations. Based on these and other state statutory provisions, the Corrections Department has promulgated the Corrections Policies and Procedures, including CPP 15.2, Category D.

KRS 197.045 provides in relevant part:

- (5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious or harassing, or if

satisfied that the action is legally without merit or factually frivolous.

- (b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

CPP 15.2, Category D, states:

1. An inmate who has filed a civil action that results in dismissal by a court based upon a finding that the action is malicious or harassing, or that it is without merit or factually frivolous shall be charged with violating this section, which shall be a major offense, and issued a disciplinary report.
2. If the Adjustment Committee or Adjustment Officer finds the inmate guilty of this offense, the punishment shall be the forfeiture of one hundred eighty (180) days of non-restorable good time.
3. All other provisions of this policy shall apply to these charges.
4. For classification purposes, this offense shall be considered at the level of a Category VI. The penalty imposed shall also apply to an inmate serving a life sentence for record keeping and classification purposes.

The courts have long recognized the right or ability of prison inmates to bring civil suits challenging the actions of prison officials in disciplining inmates. In Kentucky, the petition for a declaration of rights under KRS 418.040 has been declared the proper procedural

jurisdictional vehicle for such actions, whenever immediate release pursuant to a petition for Habeas Corpus is not involved. Polsgrove v. Kentucky Bureau of Corrections, Ky., 559 S.W.2d 736 (1977); Graham v. O'Dea, Ky. App., 876 S.W.2d 621 (1994). Under this procedure, while technically original actions, these petitions invoke the circuit court's authority to act as a court of review. "The court seeks not to form its own judgment, but with due deference to ensure that the agency's judgment comports with the legal restrictions applicable to it." Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997) (citation omitted). While review of prison disciplinary decisions are limited and deferential given the prison context, disciplinary proceedings are still subject to the requirements and protections incumbent with due process. See Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974); Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985); Smith v. O'Dea, supra.

As a result, while prison disciplinary proceedings are exempt from Chapter 13B of the Kentucky Statutes, they are subject to other substantive and procedural requirements that include the ability of inmates to seek judicial review of actions by prison officials. Matthews was not denied his state constitutional right to one direct appeal to a judicial court. He received a review of his complaints involving both his initial disciplinary proceeding and his

constitutional challenges to forfeiture of good time for filing a frivolous civil suit under CPP 15.2.

Next, we address Matthews's argument that KRS 197.045(5) and CPP 15.2, Category D, are void for vagueness. He argues that the statute and regulation fail to provide sufficient notice of the conduct proscribed in that there is no definition of what constitutes a suit that is frivolous or legally without merit and it allows arbitrary enforcement.

First, we note that the void-for-vagueness doctrine emanates from the due process provisions of the federal and state constitutions. Raines v. Commonwealth, Ky. App., 731 S.W.2d 3, 4 (1987). To survive a vagueness challenge, a criminal statute must provide "fair notice" of prohibited conduct and contain "reasonably clear" guidelines to prevent "arbitrary and discriminatory" enforcement by government officials. Smith v. Goguen, 415 U.S. 566, 572-73, 94 S. Ct. 1242, 1247, 39 L. Ed. 2d 605 (1974). "[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Kolender v. Lawson, 461 U.S. 352, 357, 103 S. Ct. 1855, 1858, 75 L. Ed. 2d 903 (1983); Hardin v. Commonwealth, Ky., 573 S.W.2d 657, 660 (1978); Commonwealth v. Foley, Ky., 798 S.W.2d 947, 951 (1990). In asserting a facial challenge to a statute as

impermissibly vague, a complainant must demonstrate that the statute is vague "not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all." Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 n.7, 102 S. Ct. 1186, 1191 n.7, 71 L. Ed. 2d 362 (1982). See also Commonwealth v. Kash, Ky. App., 967 S.W.2d 37 (1997).

Matthews's complaint based on the void-for-vagueness doctrine fails because he has not shown that KRS 197.045(5) either is so vague that it fails to provide fair notice or that it permits arbitrary enforcement. The language of the statute is reasonably plain. Although somewhat abstract, the United States Supreme Court defined frivolous for sua sponte dismissals under a similar federal statute as actions that lack "an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831-32, 104 L. Ed. 2d 338 (1989). See also Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997). The statute need only be specific enough that a litigant will reasonably be able to determine whether his suit is baseless. As the court stated in Payne v. Commonwealth, Ky., 623 S.W.2d 867, 870 (1981), "Condemned to the use of words, we can never expect mathematical certainty from our language." The statute necessarily allows some flexibility for the exercise of discretion by the trial court which is subject to further review on appeal. Further, under KRS

197.045(5), administrative forfeiture of good time occurs only after a court has found an inmate civil action to be malicious, harassing, without merit or factually frivolous.

Matthews also asserts that KRS 197.045(5) and CPP 15.3, Category D, violate the principle of separation of powers in Sections 27 and 28 of the Kentucky Constitution. He argues that the judicial branch of government has the inherent power to protect itself from vexatious litigation and conduct that impairs the ability of the court system to carry out its function. From this proposition, he concludes that "the discretion to use these tools [the imposition of fines] to punish inmates for vexatious litigation sets squarely in the jurisdiction of the courts making such findings." Thus, he contends action by the Executive Branch through the Corrections Department to sanction vexatious litigation encroaches on the power of the court system to protect itself.

The separation of the legislative and judicial branches of government is mandated by Sections 27, 28, and 116 of the Kentucky Constitution. Section 27 provides that the powers of government shall be divided among three distinct bodies: legislative, executive and judicial. Section 28 states that "No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in instances hereinafter expressly directed or permitted." Section 116 provides in part that the "Supreme Court shall

have the power to prescribe . . . rules of practice and procedure for the Court of Justice." In Ex Parte Auditor of Public Accounts, Ky., 609 S.W.2d 682, 688 (1980), the court said:

The correct principle, as we view it, is that the legislative function cannot be so exercised as to interfere unreasonably with the functioning of the courts and that any unconstitutional intrusion is per se unreasonable, unless it be determined by the Court that it can and should be tolerated in a spirit of comity. The policy of the Supreme Court is not to contest the propriety of legislation in the gray area between the legislative prerogatives of the legislature and the rule making authority of the Courts to which it can accede through a wholesome comity.

While we agree with Matthews that the judiciary has the inherent power to impose sanctions for vexatious litigation, we disagree with his conclusion that KRS 197.045(5) or CPP 15.2, Category D, infringe on the exclusive powers of the judiciary. These provisions deal with forfeiture of good time, which is a benefit awarded to inmates for good behavior while under the custody of the Corrections Department. More importantly, the administrative forfeiture sanction is available only after a civil suit has been dismissed by a court. While these provisions may, and indeed are intended, to influence the filing of frivolous civil suits by prison inmates, they in no way impinge on the handling or resolution of the suits by the court. Matthews does not cite and we have not found any case indicating that the courts have exclusive authority to provide sanctions for meritless suits. Accordingly, these provisions are not unconstitutional in violation of the separation of powers because

they do not unreasonably interfere with or inhibit an exclusive power of the judiciary.

Matthews also claims the Corrections Department exceeded its statutory authority by imposing a forfeiture of good time under CPP 15.2, Category D, in his situation involving dismissal of a lawsuit dealing with appeal of a prison disciplinary action. Although admitting there is no recorded legislative history, he asserts that the legislature intended KRS 197.045(5) to apply only to original actions declared to be without merit or frivolous. We disagree.

A fundamental principle of statutory interpretation is that a court must determine legislative intent based on the clear language of the statute. "As with any case involving statutory interpretation, our duty is to ascertain and give effect to the intent of the General Assembly. We are not at liberty to add or subtract from the legislative enactment nor discover meaning not reasonably ascertainable from the language used [in the statute]." Beckham v. Board of Educ. of Jefferson County, Ky., 873 S.W.2d 575, 577 (1994). See also Commonwealth v. Frodge, Ky., 962 S.W.2d 864, 866 (1998). A court "may not interpret a statute at variance with its stated language." Layne v. Newberg, Ky., 841 S.W.2d 181, 183 (1992) (citing Gateway Construction Co. v. Wallbaum, Ky., 356 S.W.2d 247 (1962)). See also Commonwealth v. Allen, Ky., 980 S.W.2d 278, 280 (1998). In construing a statute, all the words and phrases are to be given their common, ordinary, or approved meaning. See Withers v. University of Kentucky, Ky., 939 S.W.2d 340, 345 (1997); Lynch v. Commonwealth,

Ky., 902 S.W.2d 813, 814 (1995). "Where the words of the statute are clear and unambiguous and express the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written." Commonwealth v. W.E.B., Ky., 985 S.W.2d 344, 345 (1998) (quoting Lincoln County Fiscal Court v. Dept. of Public Advocacy, Ky., 794 S.W.2d 162, 163 (1990)).

In this case, the language of KRS 197.045(5) is clear and unambiguous. It states that "The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time . . . for those inmates who have civil actions dismissed because the court found the action to be malicious or harassing, or if satisfied that the action is legally without merit or factually frivolous." The circuit court made a specific finding and dismissed Matthews's civil declaratory judgment action challenging the prison disciplinary action because it was "legally without merit." There is nothing in the language of the statute evidencing any intent to exclude civil declaratory judgment actions challenging prison disciplinary actions. See generally Black v. Warren, 134 F.3d 732 (5th Cir. 1998) (affirming dismissal of prisoner action challenging prison disciplinary action as frivolous under Federal Prison Litigation Reform Act). Matthews's argument that the Corrections Department exceeded its statutory authority is without merit.

Finally, Matthews claims the trial court's failure to render specific findings of fact and conclusions of law violated

due process and equal protection by denying his right to meaningful access to the courts. He contends the action of the trial court prevents proper appellate review. We disagree. In the present case, there are no factual issues in dispute and it involves solely issues of law involving the constitutionality of the statute and prison regulation. We have thoroughly reviewed the record and each of the issues raised by Matthews, and hold that the trial court did not err in dismissing the petition for declaratory judgment.

For the foregoing reasons, we affirm the order of the Boyle Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

No Brief