

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002871-MR

TERRY WOOSLEY

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 97-CI-01653

KENTUCKY DEPARTMENT OF CORRECTIONS,
DIVISION OF PROBATION AND PAROLE

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: HUDDLESTON, McANULTY and MILLER, Judges.

HUDDLESTON, Judge: Terry Woosley appeals from an order dismissing his petition for a declaration of rights concerning his eligibility for parole brought pursuant to Kentucky Revised Statute (KRS) 418.040.

Woosley is serving a thirty-two-year sentence. He was initially convicted of two counts of first-degree robbery in 1978 and received two consecutive ten-year sentences. After serving

four years, Woosley was released from prison on actively supervised parole in June 1982. At that time, his maximum expiration date for purposes of parole was June 1998.

In April 1986, Woosley's parole status was changed from active supervision to inactive supervision. In a letter dated February 19, 1986, Woosley's parole officer advised him of the change in supervision status. Woosley was informed that the change did not constitute a final discharge and that he could be returned to prison or active supervision if he violated the terms of parole. He was also told that he was eligible to apply for final discharge from parole on or after June 6, 1990, provided all eligibility requirements were met, and that "[y]our parole officer will assist you in this matter." A form signed by Woosley on April 9, 1986, when he was officially released from active supervision, set out his right to apply for final discharge if he maintained clear conduct for a period of ten years. The form also advised Woolsey that release from active supervision is not a final discharge from parole and that he was "subject to return to the institution until [he] receive[d] a final Discharge."

In June, 1992, Woosley was arrested and charged with the felony offense of trafficking in marijuana over eight ounces. In September 1992, he was convicted of the trafficking offense and received a two-year sentence that was to run consecutively to the twenty-year sentence he had received in 1978.¹ Upon his return to prison, the Department of Corrections calculated Woosley's maximum expiration date, adjusted for credit time served in jail, as

¹ See Ky. Rev. Stat. (KRS) 533.060(2).

September 2011, which did not include any credit for the eleven years and three months he had been on parole.²

In February 1994, Woosley was granted parole and released from prison on active supervision status. In July 1996, he was again arrested and charged with trafficking in a controlled substance. In addition to the felony prosecution, Woosley's parole was revoked in March 1997.³ In November 1997, Woosley was convicted of trafficking in a controlled substance and of being a persistent felony offender in the second degree and received a ten-year sentence to be served consecutively to the previous twenty-two-year sentence. He is currently serving a thirty-two-year sentence with a maximum expiration date of 2024 and a minimum expiration date of 2016.

In November 1997, Woosley filed a petition for declaratory judgment seeking unspecified relief with respect to calculation of his prison sentence. He alleged violation of his constitutional right to equal protection and due process in the Correction Department's handling of his parole and determination of his parole eligibility. More specifically, he contended that his parole officer was negligent in failing to file final parole discharge documents with the Parole Board that could have led to completed service of his twenty-year sentence from the 1978 robbery conviction prior to the 1993 conviction for trafficking in marijuana. He alleged that his parole officer failed to carry out the duties required of him under KRS Chapter 439, 501 Kentucky

² See KRS 439.344.

³ At that time, reconsideration of Woosley for parole was deferred for a period of three years until March 2000.

Administrative Regulation (KAR) 1:050 and Corrections Polices and Procedures (CCP) 27-25-01. In January 1998, the Corrections Department filed a response disputing Woolsey's allegations and requesting dismissal pursuant to Kentucky Rules of Civil Procedure (CR) 12.02, 12.03 and 56.02.⁴ Woosley filed a reply to the Department's response. The circuit court summarily dismissed the petition in September 1998.

On appeal, Woosley argues that he had a protected constitutional due process liberty interest in being considered for final discharge from parole. He asserts that the use of mandatory language in 501 KAR 1:050 and CPP 27-25-01 created a liberty interest and obligated his parole officer to file the necessary documents requesting final discharge. Woosley also contends that the Parole Board was required under 501 KAR 1:050 to automatically consider him for final discharge from parole after he had been on parole for ten years with no violations. He further claims that the Parole Board's failure to consider him for final discharge within the ten-year period following his initially receiving parole in 1982 violated his right to equal protection.

Woosley's reliance on CPP 27-25-01 is misplaced. The version of the policy cited and relied upon by Woosley became effective on March 15, 1990, approximately eight years after he was paroled and four years after he was placed on inactive supervision. As the Corrections Department has demonstrated, there was no prison

⁴ Ky. R. Civ. Proc. (CR) 12.02 and CR 12.03, read together, provide that the court in which an action is pending may dismiss a complaint which fails to state a claim upon which relief can be granted. CR 56.02 provides that the court may grant summary judgment where there are no material fact issues and the defendant is entitled to judgment as a matter of law.

policy regarding the handling of final discharge applications by parole officers prior to March 1988, at which time the first version of CPP 27-25-01 was promulgated. The March 1988 version of the policy did not direct parole officers to prepare form No. 1199, which contains the final discharge policy contained in 501 KAR 1:050 to which Woosley refers in support of his position at the initial meeting with the parolee. Thus, Woosley has not shown that his parole officer violated any policy in effect at the relevant time period.

Woosley attempts to circumvent the problem of the effective date of the policy by arguing that his parole officer was obligated to inform him of any changes or additions to the Corrections Policies and Procedures. His citation to CPP 27-02-01 and CPP 27-25-01 does not support his argument. Neither of these policies require parole officers to act affirmatively to inform parolees on inactive supervision status of changes in policies not directly affecting those supervision duties.

A review of either version of CPP 27-25-01 reveals that the parolee was required to prepare the application for final discharge. Both the 1988 and 1990 versions of CPP 27-25-01 state: "It is the responsibility of the client [i.e., Woosley] to apply on or after the eligibility date." In addition, Woosley was given and signed a document in April 1986 informing him of his eligibility to apply for early final discharge which was similar to the form No. 1109 discussed in the March 1990 version of CPP 27-25-01. He was thus made aware of his ability and responsibility to apply for early final discharge prior to his parole revocation in 1993.

Woosley's attempt to shift the burden on his parole officer for requesting his early final discharge from parole is unavailing.

Woosley's argument that the Parole Board violated his procedural due process rights also fails. In Belcher v. Kentucky Parole Board,⁵ this Court held that a convict does not have a due process liberty interest in parole. Our decision was based on the discretionary authority of the Parole Board in making parole decisions. "Nothing in the statute or regulations mandates the granting of parole in the first instance," we said, "and nothing therein diminishes the discretionary nature of the Board's authority in such matters."⁶

Similarly, the Parole Board has absolute discretion in deciding whether to grant a parolee final discharge from parole prior to the maximum expiration of his sentence. KRS 439.354 provides in part that: "When any paroled prisoner has performed the obligations of his parole supervision the board may, at the termination of such period to be determined by the board, issue a final discharge from parole to the prisoner"⁷ Although 501 KAR 1:050(1) indicates that after a parolee has been on parole for ten years, the Parole Board shall consider him for a final discharge, it also states that "the board retains the right to grant an early final discharge from parole." Woosley was not entitled to receive a final discharge after serving ten years on

⁵ Ky. App., 917 S.W.2d 584 (1996).

⁶ Id. at 586 (citations omitted).

⁷ Emphasis supplied.

parole, he merely became eligible for consideration for final discharge at that time.

While Woosley raises the issue of whether he had a liberty interest in being considered for final discharge, the gravamen of his complaint is that his total sentence included the sentences for the 1978 convictions because he had not received a final discharge from parole from those earlier convictions. He has not shown that he would have been granted a final discharge and he, in fact, committed the felony marijuana trafficking offense approximately ten years and one month after being paroled. Given the discretionary nature of the decision whether to grant an early final discharge, Woosley has not demonstrated that the Parole Board violated a constitutionally protected due process interest in failing initially to consider or grant him a final discharge from parole.

Finally, Woosley's claim that the Parole Board violated his right to equal protection is without merit. It is axiomatic that an equal protection claim must involve disparate or different treatment of similarly situated individuals.⁸ Woosley does nothing more than aver generally that he was subjected to differential treatment by government officials. Consequently, he has not stated a cause of action based on equal protection.

In conclusion, Woosley has failed to allege sufficient facts to support his claim that his rights to due process and equal

⁸ See, e.g., Mahoney v. Carter, Ky., 938 S.W.2d 575 (1997); Roberts v. Mooneyhan, Ky. App., 902 S.W.2d 842 (1995); Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982).

protection were violated. Therefore, the circuit court did not err in dismissing his declaratory judgment petition.

The order dismissing Woosley's petition for a declaration of rights is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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