

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001499-MR

JOHN ALLEN

APPELLANT

v. APPEAL FROM LEE CIRCUIT COURT
HONORABLE WILLIAM W. TRUDE, JR., JUDGE
ACTION NO. 02-CI-00019

KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BARBER, COMBS, AND MILLER, JUDGES.

MILLER, JUDGE: John Allen brings this *pro se* appeal from a May 30, 2002 order of the Lee Circuit Court denying him declaratory relief under Kentucky Revised Statutes (KRS) 418.040 and Ky. R. Civ. P. 57. We affirm.

Appellee has not filed a brief in this matter, and appellant's brief is lacking in some respects. We shall attempt, nevertheless, to ferret out the facts. Allen was sentenced by the Campbell Circuit Court in 1989 to a term of fifteen years' imprisonment. Apparently, at the time of sentencing, the court recognized that Allen may need some type of drug treatment.

In 1993, Allen was paroled and returned to the State of Missouri to finish a sentence there. He was later released from Missouri and returned to this state on parole. In 1996, his parole was revoked.

A condition of Allen's parole was that he receive treatment in a drug treatment facility. Apparently, the Parole Board imposed the condition, following the thinking of the circuit court.

It appears that Allen, upon separate occasions, spent a total of 209 days confined in half-way houses undergoing drug treatment. He claims that because his liberty was restricted during these confinements he should be given credit against his fifteen year prison sentence. He perceives his confinement in the treatment facilities as being pursuant to court order.

We view the question before us as whether the circuit court erred in failing to credit Allen for time spent in the drug treatment facilities. We think not.

It is fundamental that time spent on parole cannot be credited against a prisoner's sentence. KRS 439.344. It is further without question that parole is a matter of grace and within the prerogative of the Parole Board, and that the Board may place reasonable conditions upon the granting of a parole. See Willard v. Ferguson, Ky., 358 S.W.2d 516 (1962).

Upon review of the record as a whole, we view the circuit court's reference to drug treatment as merely a recommendation. The conditioning of parole upon drug treatment is within the jurisdiction of the Parole Board. The Campbell

Circuit Court simply sentenced Allen to prison, and the Parole Board thereafter incorporated the circuit court's recommendation as a condition of parole. In any event, we are convinced that both the circuit court and the Parole Board acted appropriately.

In sum, we perceive no merit in the appellant's contention that he is entitled to credit for the period of time spent in drug treatment facilities.

For the foregoing reasons, the order of the Lee Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE.

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