

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-001986-MR

BOBBY CURTIS

APPELLANT

V.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
ACTION NO. 03-CI-02063

KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, McANULTY, AND MINTON, JUDGES.

MINTON, JUDGE: Inmate Bobby Gene Curtis appeals from a circuit court order that denied his petition for declaratory judgment seeking a declaration of rights that he is entitled to have time spent while on parole credited to his final discharge date under a special provision contained in 2003 Ky. Acts, Ch. 156, Part IX, item 36(a). Because Curtis is not entitled to parole credit under this provision, we affirm.

Curtis was paroled in November 2001. He was returned to custody after ten months and five days. His parole was finally revoked in September 2002 for a violation of the conditions of parole.

After his return to custody, Curtis filed a petition for declaratory judgment in the circuit court.<sup>1</sup> In the petition, Curtis alleged that he is entitled to have the period of time he was on out on parole credited toward his final discharge date. The circuit court denied the petition. This appeal followed.

In support of his argument, Curtis relies upon a special provision contained in 2003 Ky. Acts, Ch. 156, Part IX, item 36(a),<sup>2</sup> a budget bill, which provides as follows:

Probation and Parole Credit:

Notwithstanding KRS 439.344,<sup>3</sup> the period of time spent on parole shall count as a part of the prisoner's remaining unexpired

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<sup>1</sup> Kentucky Revised Statutes (KRS) 418.040.

<sup>2</sup> The act originated as House Bill 269.

<sup>3</sup> KRS 439.344 provides as follows: "The period of time spent on parole shall not count as a part of the prisoner's maximum sentence except in determining parolee's eligibility for a final discharge from parole as set out in KRS 439.354." KRS 439.354 provides as follows: "When any paroled prisoner has performed the obligations of his parole during his period of active 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. Unless ordered earlier by the board, a final discharge shall be issued when the prisoner has been out of prison on parole a sufficient period of time to have been eligible for discharge from prison by maximum expiration of sentence had he not been paroled, provided before this date he had not absconded from parole supervision or that a warrant for parole violation had not been issued by the board."

sentence, when it is used to determine a parolee's eligibility for a final discharge from parole as set out in KRS 439.354, or when a parolee is returned as a parole violator for a violation other than a new felony conviction.<sup>4</sup>

The Governor vetoed a portion of the bill on March 20, 2003. And the balance of the bill became law March 23, 2003, without the Governor's signature. The General Assembly overrode the Governor's vetoes on March 25, 2003.<sup>5</sup> The act accordingly went into effect approximately six months after Curtis's parole was revoked.<sup>6</sup>

KRS 446.110, the statute relied upon by the circuit court in denying Curtis's petition, provides as follows:

No new law shall be construed to repeal a former law as to any offense committed against a former law, nor as to any act done, or penalty, forfeiture or punishment

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<sup>4</sup> See 2003 Ky. Acts, Vol. II, p. 1876.

<sup>5</sup> The veto and veto overrides did not affect the provisions of the bill at issue in the case. See 2003 Ky. Acts, Vol. II, p. 1912.

<sup>6</sup> In his brief, Curtis states, without citation, "[a]llegedly the Bill was to become effective April 1st[, ] 2003, and be in effect until June 30th[, ] 2004. The Bill is to allegedly apply to inmates that have their parole revoked after April 1st[, ] 2003." While the language of the bill does not corroborate this, it is apparent that the provision was not intended to permanently amend existing parole credit provisions. The provision does not conform with the requirements of KRS 446.145(1) for amending an existing section of a statute by indicating the material proposed to be deleted by brackets and by striking through the material, nor with the requirements of KRS 446.145(2) by indicating new material by underlining. Cf. Com. Educ. & Humanities Cabinet Dept. of Educ. v. Gobert, Ky.App., 979 S.W.2d 922, 927 (1998) (A budget is required to be enacted as a bill and, as such, has the power to amend or repeal existing statutes). The section has also not been codified into the probation and parole provisions of the Kentucky Revised Statutes.

incurred, or any right accrued or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising before the new law takes effect, except that the proceedings thereafter had shall conform, so far as practicable, to the laws in force at the time of such proceedings. If any penalty, forfeiture or punishment is mitigated by any provision of the new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect.

We agree with the circuit court that application of KRS 446.110 prevents retroactive application of the provision to Curtis. Further, it is a principle of statutory construction that retroactive effect or retrospective application of an act will not be given or made unless the intent that it should be is clearly expressed or necessarily implied.<sup>7</sup> No statute shall be construed to be retroactive, unless expressly so declared.<sup>8</sup> It follows that the credit rules in effect at the time Curtis was on parole and at the time his parole was revoked are applicable to the time he spent on parole, rather than the provisions of 2003 Ky. Acts, Ch. 156, Part IX, item 36(a).

Curtis raises for the first time in this appeal various constitutional challenges, including equal protection,

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<sup>7</sup> Taylor v. Asher, Ky., 317 S.W.2d 895, 897 (1958).

<sup>8</sup> KRS 446.080(3).

which, he claims, compels the application of the new parole rules to his situation. However, as Curtis did not raise these issues in the circuit court, we will not address these issues on the merits.<sup>9</sup>

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bobby Gene Curtis, *Pro se*  
Blackburn Correctional Complex  
Lexington, Kentucky

BRIEF FOR APPELLEE:

(No brief filed)

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<sup>9</sup> Chambers v. City of Newport, Ky.App., 101 S.W.3d 904, 906 (2002). Further, Curtis failed to comply with KRS 418.075 by notifying the Attorney General of his challenge to the constitutionality of the provision.