

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-001045-MR

STEVE BASKERVILLE

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 05-CI-00022

THOMAS L. SIMPSON, WARDEN; AND  
JOHN REES, COMMISSIONER FOR THE  
DEPARTMENT OF CORRECTIONS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

JOHNSON, JUDGE: Steve Baskerville, pro se, has appealed from the April 25, 2005, order and judgment of the Lyon Circuit Court denying and dismissing his petition for declaratory judgment. Baskerville's petition sought sentence credit for time he spent on parole from August 18, 2003, to September 3, 2004. Having

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<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

concluded that the circuit court correctly applied the law to the facts of this case, we affirm.

Baskerville was sentenced to 20 years in prison by the Todd Circuit Court in September 1986 under Indictment No. 86-CR-010 which charged him with kidnapping and assault in the first degree. In September 1996 Baskerville was released on parole until October 2001, when his parole was revoked following his conviction on at least two new felonies in Muhlenberg Circuit Court. He was sentenced to two years' imprisonment by the Muhlenberg Circuit Court to run consecutively to the remainder of his sentence from the Todd Circuit Court.

On August 18, 2003, Baskerville was again released on parole. He was subsequently arrested on May 6, 2004, in Christian County, Kentucky, for driving under the influence<sup>2</sup> and operating a motor vehicle without a license.<sup>3</sup> After being released on bail on May 7, 2004, Baskerville contacted his parole officer and advised her of his arrest. He was told to report to the parole officer on May 9, 2004, and was then placed under arrest by the parole officer for alleged violation of his parole conditions.

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<sup>2</sup> KRS 189A.010.

<sup>3</sup> KRS 186.410.

On May 12, 2004, Baskerville's parole officer provided him with a notice of a preliminary parole revocation hearing.<sup>4</sup> At the same time, Baskerville waived his right to a preliminary revocation hearing before an Administrative Law Judge to determine if probable cause existed that he had violated his parole.<sup>5</sup> Following Baskerville's waiver of the preliminary revocation hearing, the matter was referred to the Kentucky Parole Board which on May 21, 2004, issued a parole violation warrant for Baskerville.<sup>6</sup> On September 3, 2004, the Kentucky Parole Board formally revoked Baskerville's parole. Baskerville was given a credit of three months and 25 days toward the remainder of his sentence after his parole was revoked. This credit was calculated from May 12, 2004, when he waived the preliminary revocation hearing through September 3, 2004, when Baskerville's parole was formally revoked.

Baskerville then filed a petition for a declaration of rights in the circuit court alleging that he was entitled to an additional eight months and 20 days credit on his sentence for time that he was actually released on parole. As the basis for his claim, Baskerville relied upon a provision of the 2003

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<sup>4</sup> 501 Kentucky Administrative Regulations (KAR) 1:040(1).

<sup>5</sup> See KRS 439.341; and 501 KAR 1:040(6)(a).

<sup>6</sup> KRS 439.330(1)(e).

Kentucky State/Executive Branch budget<sup>7</sup> which modified KRS 439.344 as follows:

Notwithstanding KRS 439.344, the period of time spent on parole shall count as a part of the prisoner's remaining unexpired 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 [emphasis added].

This credit provision applied only to parolees who were returned to prison for violations other than new felony convictions after the effective date of the legislation, April 1, 2003, through the expiration of the 2003/2004 budget on June 30, 2004.

Baskerville contends that he was "returned as a parole violator" when he waived the preliminary revocation hearing and the Kentucky Parole Board issued the parole violation warrant on May 21, 2004. Because his parole was not revoked on the basis of a new felony conviction, he contends that he is entitled to a credit for the entire time he spent on parole toward the unexpired portion of his sentence. The circuit court held that Baskerville was not "returned as a parole violator" until the Parole Board formally revoked his parole on September 3, 2004, and, therefore, he was not entitled to the "street time" credit because the provision expired on June 30, 2004. We agree.

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<sup>7</sup> 2003 Kentucky Acts Chapter 156, Part IX, Section 36(a).

The construction and application of statutes is a matter of law subject to de novo review.<sup>8</sup> When interpreting a statute, we must "ascertain and give effect to the intent of the General Assembly."<sup>9</sup> "A fundamental rule of statutory construction is to determine the intent of the legislature, considering the evil the law was intended to remedy."<sup>10</sup> In addition, it is well-established that the words used in a statute are to be given their plain and ordinary meaning.<sup>11</sup> A court may refer to a dictionary to ascertain the plain and ordinary meaning which the Legislature intended to ascribe to the term.<sup>12</sup>

Prior to the enactment and after the expiration of the 2003 budget, credit for time spent on parole was and is prohibited.<sup>13</sup> The plain meaning of the language used in the 2003 modification of KRS 439.344 is clear that the credit only applies when parole has been officially revoked. Under Kentucky law, parole is not revoked until the Parole Board holds a final parole revocation hearing.<sup>14</sup> Despite Baskerville's contention that his

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<sup>8</sup> Bob Hook Chevrolet Isuzu, Inc. v. Commonwealth, Transportation Cabinet, 983 S.W.2d 488, 490 (Ky. 1998).

<sup>9</sup> Commonwealth v. Harrelson, 14 S.W.3d 541, 546 (Ky. 2000).

<sup>10</sup> Beach v. Commonwealth, 927 S.W.2d 826, 828 (Ky. 1996).

<sup>11</sup> Harrelson, 14 S.W.3d at 547.

<sup>12</sup> See Young v. Commonwealth, 968 S.W.2d 670, 672 (Ky. 1998).

<sup>13</sup> KRS 439.344.

<sup>14</sup> 501 KAR 1:040, Section 6, states as follows:

parole was revoked when he waived the preliminary revocation hearing and the Parole Board issued a parole violation warrant, the Parole Board still maintained discretion to continue Baskerville on parole, to modify the terms and conditions of parole, or to revoke parole.

The waiver of the preliminary revocation hearing in this matter simply had the effect of establishing that there was probable cause that a violation had occurred. Pursuant to 501 KAR 1:040(7), the determination by the ALJ that there was probable cause that a violation occurred is merely an advisory for the Parole Board to use in making its final decision.

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- (a) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing.
  - (b) Except as provided by paragraph (c) of this subsection, if probable cause is found to exist, the case shall then be referred to the Parole Board which shall then issue a parole violation warrant which shall cause the parolee to be brought before the Parole Board for a final parole revocation hearing.
  - (c) Notwithstanding a finding of probable cause, leniency may be granted in any form deemed appropriate by the administrative law judge if all parties agree to the leniency, and if the parolee agrees to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.

Likewise, the waiver of the preliminary hearing and subsequent finding that probable cause existed required the issuance of the parole violation warrant bringing Baskerville before the Parole Board for the final revocation hearing.<sup>15</sup> Neither of these events had the effect of returning Baskerville to custody as a parole violator as required for the application of the 2003 modification of KRS 439.344. Baskerville was not returned as a parole violator until the Parole Board's final decision issued on September 3, 2004. Because the 2003 modification of KRS 439.344 had expired on June 30, 2004, it was not applicable to Baskerville.

Based upon the foregoing, the order and judgment of the Lyon Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Steve Baskerville, Pro Se  
Central City, Kentucky

BRIEF FOR APPELLEES:

Brenn O. Combs  
Frankfort, Kentucky

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<sup>15</sup> 501 KAR 1:040, Section 3(1).