

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002638-MR

ROLAND L. CURETON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
CIVIL ACTION NO. 04-CI-03311

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: JOHNSON AND TAYLOR, JUDGES; HUDDLESTON,¹ SENIOR JUDGE.

HUDDLESTON, SENIOR JUDGE: In 1995, Roland L. Cureton was convicted of arson in the second degree and unlawful imprisonment in the first degree in Jefferson Circuit Court and was sentenced to a total of 12 years' imprisonment. In 1996, Cureton was convicted of fraudulent use of a credit card and of being a persistent felony offender in the first degree, also in Jefferson Circuit Court, and was sentenced to 20 years'

¹ 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 KRS 21.580.

imprisonment to be served consecutively to the previously imposed sentence. In July 2003, Cureton was paroled.

Cureton was convicted of unspecified misdemeanors on February 10, 2004. On February 18, 2004, he was taken into custody. A preliminary hearing was scheduled for March 2, 2004, to determine whether there was probable cause to believe that he had violated the conditions of his parole. Before a hearing could be held, Cureton waived his right to a hearing. He later claimed that, on the same day that he waived the hearing, he told his parole officer that he wanted to withdraw the waiver. In any event, a preliminary hearing was not held, and on March 3, 2004, he was returned to the custody of the Department of Corrections.

On April 8, 2004, the Kentucky State Parole Board held a hearing adjudicating Cureton's alleged parole violations. According to Cureton, the Parole Board found him guilty and punished him by deferring his parole for 20 months.

On May 20, 2004, while at the Blackburn Correctional Complex in Lexington, Cureton, acting *pro se*, filed a petition for writ of *habeas corpus* with Fayette Circuit Court claiming that the final hearing held by the Parole Board was void since a preliminary hearing was not held prior to the Parole Board hearing, thus resulting in a violation of his due process rights. Fayette Circuit Court denied Cureton's petition.

Cureton, again acting *pro se*, tendered, on August 12, 2004, a petition for a writ of mandamus² seeking to have Fayette Circuit Court prohibit the Parole Board from holding any further hearings relating to his parole violations and seeking an order directing the Parole Board to reinstate his parole. As in his petition for a writ of *habeas corpus*, Cureton claimed that the Parole Board had violated his due process rights when it held a final hearing before he was given a preliminary hearing. And, he argued, if the Parole Board were to hold a subsequent preliminary hearing and then another final hearing in an effort to correct the alleged errors, it would further violate his due process rights.

On August 17, 2004, a preliminary hearing was held in Jefferson County to consider whether there was probable cause to believe that Cureton had violated the conditions of his parole. Then, on October 27, 2004, the Parole Board held a second adjudicatory hearing. The Parole Board again found Cureton guilty and punished him by deferring his parole, this time for 14 months. On December 1, 2004, Fayette Circuit Court denied Cureton's petition for a writ of mandamus holding that Cureton "has received or will receive all of the relief to which he is entitled under any case authority or Constitutional provision." Cureton then appealed to this Court.

² Cureton's petition for a writ of mandamus was stamped "filed" by the Fayette Circuit Clerk's office on August 23, 2004.

On appeal, Cureton reiterates the same arguments he made below. According to Cureton, he was entitled to, at the very least, minimal due process in resolving the allegation that he violated the conditions of his parole. As part of that minimal due process, Cureton insists, he was entitled to a preliminary hearing within 14 days of being taken into custody to determine whether there was probable cause to believe that he had violated the conditions of his parole. Moreover, Cureton argues, he was entitled to a final hearing to adjudicate the alleged parole violations within 30 days of being returned to prison. Since he did not receive either hearing in a timely fashion, he reasons that the Parole Board violated his due process rights. He asks this Court to reverse the Fayette Circuit Court order and direct the Parole Board to reinstate his parole.

If what Cureton tells us is true, he was denied the minimal due process guaranteed by the U.S. Constitution³ when a final hearing was held before a preliminary hearing was conducted. And the Parole Board further denied him his due process rights when it attempted to correct the procedural errors by belatedly holding a preliminary hearing and a second adjudicatory hearing.

³ See *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Unfortunately, we cannot address the merits of Cureton's claims because the Parole Board reinstated Cureton's parole as of December 5, 2005. Since Cureton is once more on parole, we can no longer grant him the relief that he seeks. Inasmuch as the Parole Board's action in granting Cureton parole has effectively rendered his appeal moot, we have no recourse but to dismiss this appeal.⁴

It is, therefore, ORDERED that this appeal is DISMISSED as MOOT.

ALL CONCUR.

ENTERED: August 18, 2006

/s/ Joseph R. Huddleston
SENIOR JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Roland L. Cureton, *pro se*
Louisville, Kentucky

BRIEF FOR APPELLEES:

Elizabeth A. Heilman
Assistant General Counsel
Office of Legal Services
JUSTICE & PUBLIC SAFETY
CABINET
Frankfort, Kentucky

⁴ See *Carras v. Williams*, 807 F.2d 1286, 1289 (6th Cir. 1986).