

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001186-MR

JOHN REES, COMMISSIONER OF
KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 05-CI-01274

SEAN MILLER

APPELLEE

and

NO. 2006-CA-001355-MR

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 06-CI-00403

QUENTIN SUTTON

APPELLEE

and

NO. 2006-CA-001784-MR

ROGER D. HANEY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 06-CI-00328

KENTUCKY BUREAU OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING IN PART AND REVERSING IN PART

** ** * * * **

BEFORE: KELLER AND VANMETER, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: These three appeals involve the application of House Bill 269 to determine whether appellees, Sean Miller and Quentin Sutton, and appellant, Roger D. Haney, are entitled to credit for time spent on parole. We will examine each appeal in turn.

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Miller is currently serving a twenty-three year sentence. He was paroled on a prior nine year sentence on July 22, 2003. Thereafter, Miller absconded from parole. The parole board issued a warrant for that violation on June 29, 2004. Miller was arrested and returned to prison in October 2004 for a technical violation. His parole was revoked on February 4, 2005. Miller filed a petition for a declaratory judgment in the Franklin Circuit Court after the Department of Corrections (DOC) refused to credit his unexpired sentence with the time he spent on parole. The trial court held that pursuant to

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

H.B. 269, the DOC must credit Miller for the time he spent on parole between July 22, 2003, and June 30, 2004. This appeal followed.

The DOC argues that the trial court erred in granting Miller credit for time spent on parole because he was not entitled to such credit by the plain language of H.B. 269. We agree.² KRS 439.344 states that “[t]he period of time spent on parole shall not count as 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.” H.B. 269 was passed in 2003 as part of a state budget bill and contains the following language pertinent to this appeal:

36. COMMUNITY SERVICES AND LOCAL FACILITIES

a. Probation and Parole Credit:

Notwithstanding KRS 439.344, the period of time spent on parole shall count as part of the prisoner's unexpired sentence, when it is used to determine a parolee's final discharge 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.

2003 Ky.Acts, CH. 156, Part IX, item 36(a), p. 1876. H.B.269 passed into law without the governor's signature on March 23, 2003. 2003 Ky.Acts, Vol. II, p. 1912. H.B. 269 applied retroactively from July 1, 2002, until June 30, 2004.

In *Commonwealth v. Garnett*, 8 S.W.3d 573, 575-6 (Ky.App. 1999), this

Court stated:

²We note that this issue has been addressed in several unpublished decisions of this Court: *Harvey v. Com., Justice and Public Safety Cabinet*, No. 2005-CA-002572-MR(rendered October 27, 2006); *Fredricks v. Fletcher*, No. 2004-CA-001994-MR(rendered June 24, 2005) ; *Harper v. Kentucky Dept. of Corrections*, No. 2003-CA-002447-MR(rendered April 8, 2005).

The interpretation of a statute is a matter of law. A reviewing court is not required to adopt the trial court's interpretation, but, rather, must interpret the statute according to the plain meaning of the act and in accordance with its intent. A reviewing court is not at liberty to add or subtract from the legislative enactment nor discover meaning not reasonably ascertainable from the language used. An appellate court is bound by the words chosen by the General Assembly. "The statute must be tested on the basis of what is said rather than what might have been said."

(internal citations omitted).

H.B. 269 states that "time spent on parole shall count as part of the prisoner's unexpired sentence... when a parolee is returned to prison as a parole violator for a violation other than a new felony conviction. While Miller was paroled when H.B. 269 was in effect, he was returned to prison as a parole violator in October 2004, after the bill had expired. Therefore, the law in effect at the time of his return to prison was KRS 439.344. We conclude that Miller is not entitled to credit for the time he spent on parole. The judgment of the Franklin Circuit Court is reversed.

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Quentin Sutton is currently serving an eight year sentence in prison. He was paroled on August 22, 2003, which occurred while H.B. 269 was in effect. Sutton was arrested and returned to prison for a technical violation of his parole in October 2005, after the bill had expired. Sutton filed a petition for declaration of rights in Franklin Circuit Court after the DOC refused to credit his unexpired sentence with the time he spent on parole. The trial court held that Sutton was entitled to the credit. We

conclude that Sutton was not entitled to the credit for the reasons stated in the above appeal. The judgment of the Franklin Circuit Court is reversed.

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Roger D. Haney is currently serving an eleven year sentence in prison. He was paroled on April 17, 2002, before H.B. 269 took effect and he was returned to prison for a technical parole violation on September 22, 2004, after the bill had expired. Haney is not entitled to credit for time he spent on parole for the reasons stated above. The order of the Franklin Circuit Court is affirmed.

Therefore, we affirm the order of the Franklin Circuit Court in appeal no. 2006-CA-001784-MR; and reverse the judgments in appeal nos. 2006-CA-001186-MR and 2006-CA-001355-MR.

ALL CONCUR.

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NO BRIEF FOR APPELLEE SUTTON.