

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002327-MR

DANNY GOFF

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 07-CI-00888

JOHN REES

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, VANMETER AND WINE, JUDGES.

ACREE, JUDGE: Danny Goff appeals, *pro se*, from an order of the Franklin Circuit Court denying his petition for declaration of rights regarding the Department of Corrections' denial of meritorious good time credited against his twenty-year sentence. We affirm.

Goff received a twenty-year sentence in 1996 after he was convicted of two counts of incest. Kentucky Revised Statute (KRS) 197.045, which governs credit for good conduct and meritorious service, among other things, was amended in 1998 to require sex offenders to successfully complete the sex offender treatment program prior to being eligible for good time. KRS 197.045(4). Because Goff was convicted prior to the enactment of this amendment, its provisions do not apply to calculation of his statutory good time credit. Goff apparently stopped receiving meritorious good time credit sometime in 2000. He filed a petition for a declaration of rights in 2007, alleging that the Department of Corrections was unlawfully denying him meritorious good time credit. Goff claimed that all inmates convicted of sexual offenses were being denied meritorious good time, regardless of the date of conviction. The circuit court dismissed the petition, finding that the award of meritorious good time credit was discretionary. *Anderson v. Parker*, 964 S.W.2d 809, 810 (Ky.App. 1997). This appeal followed.

On appeal, Goff argues that the circuit court erroneously failed to consider his liberty interest and violation of due process claims before dismissing his petition. The circuit court's order noted that Goff claimed he was being denied meritorious good time credit because he failed to complete the offender treatment program. (Goff cannot be admitted to the program because of his refusal to admit that he committed the offenses of which he was convicted.) The circuit court found that KRS 197.045(4) does exempt a sex offender convicted prior to the

enactment of the amendment from being required to complete the program prior to earning **statutory good time credit**. Indeed, subsection (4) of the statute states that a sex offender “who does not complete the sex offender treatment program for any reason shall serve his entire sentence without benefit of good time, parole, or other form of early release.” Goff had twice been considered for parole, in 2000 and 2007. Thus, the Department of Corrections clearly is not applying KRS 197.045(4) to his sentence.

KRS 197.045(3) gives the Department of Corrections the discretion to award an additional five days per month meritorious good time credit to an inmate for “performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs.” Goff makes no claim that he has done anything since 2000 to earn such meritorious good time credit under the statute. Instead, he claims that previous awards of such credit created a protected liberty interest in his continuing to receive these awards. This Court has previously considered the argument that an inmate has a protected interest in the awarding of meritorious good time credit.

This is not a case where the state has created a right to a good time credit which has not been awarded or taken from an inmate for *misconduct*. See, *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). In such cases Fourteenth Amendment “liberty” is implicated entitling inmates to minimum procedures required by the due process clause to insure that the state-created right is not arbitrarily abrogated. No inmate has a *right* to meritorious good

time under CPP 15.3, it is a *privilege* bestowed at the discretion of the Commissioner.

Because the award of meritorious good time under CPP 15.3 is left entirely to the discretion of prison administrators, we hold inmates such as appellant have no protected liberty interest at stake in its' [sic] denial.

Anderson, 964 S.W.2d at 810 (Emphasis in original). Consequently, since Goff has shown no right to receive meritorious good time credit, the circuit court correctly dismissed Goff's petition.

Goff also argues on appeal that the Department of Corrections failed to properly calculate his statutory good time credit under KRS 197.045(1). As the Department of Corrections points out, this issue was not preserved for appellate review. The circuit court's order stated clearly that Goff's petition did not claim he was denied statutory good time. We have examined the petition carefully, and we agree. Because Goff did not raise the issue before the circuit court, we are unable to consider it on appeal. *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976).

We note briefly that Goff claims he did, in fact, raise this issue before the circuit court and that he was not permitted sufficient time to reply to the Department of Corrections' motion to dismiss his petition. The extent to which Goff's petition allegedly raised any issues concerning calculation of his statutory good time credit pursuant to KRS 197.045(1) is found in the conclusion of his petition wherein he states the following:

Wherefore, the petitioner prays this court will in the interest of justice and fundamental fairness, issue an order to the KYDOC, to reinstate all petitioners [sic] good time that he is entitled to.

Given that the entirety of the petition preceding this conclusion addresses the failure to award meritorious good time, and that statutory good time is never explicitly mentioned, we disagree with Goff's contention that he asked the circuit court to correct any perceived miscalculation in the amount of statutory good time to which he was entitled. Further, the Department of Corrections' response to his petition exclusively addresses the issue of Goff's alleged right to receive meritorious good time. Consequently, we fail to perceive how any reply timely made by Goff would have altered the circuit court's decision.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Danny Ray Goff, *pro se*
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Brenn O. Combs
Kentucky Justice & Public Safety
Cabinet, Office of Legal Services
Frankfort, Kentucky