

RENDERED: NOVEMBER 7, 2008; 2:00 P.M.  
 NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-000434-MR

DAVID B. GRUBBS

APPELLANT

APPEAL FROM FRANKLIN CIRCUIT COURT  
v. HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 07-CI-01944

KENTUCKY JUSTICE &  
PUBLIC SAFETY CABINET

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KELLER AND WINE, JUDGES; LAMBERT,<sup>1</sup> SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: David B. Grubbs, proceeding *pro se*, appeals from an order of the Franklin Circuit Court dismissing his declaratory judgment action

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<sup>1</sup> Senior Judge Joseph E. Lambert 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.

against the Kentucky Justice and Public Safety Cabinet.<sup>2</sup> Upon review, we affirm the decision of the Franklin Circuit Court.

Grubbs is an inmate at the Kentucky State Reformatory in LaGrange. Upon a guilty plea, Grubbs was convicted in the Laurel Circuit Court on March 21, 2006, of fraudulent use of a credit card and of being a first-degree persistent felony offender. He was sentenced to fifteen years' imprisonment. Grubbs had been previously incarcerated in federal prison on three other occasions. The Laurel Circuit Court judgment reflects that Grubbs' sentence was ordered to run concurrently with his federal sentences.

On November 30, 2007, Grubbs filed a petition for declaration of rights in the Franklin Circuit Court. He argued that the Kentucky Department of Corrections was obligated to give him credit for the time he had spent in federal custody prior to his conviction in the Laurel Circuit Court. He further claimed that he had a total of ninety-three months of federal sentence credit that should have been applied to his Kentucky sentence. He had only been credited for twenty-four months. Accordingly, Grubbs asked the Franklin Circuit Court to issue an order directing the Department of Corrections to apply the remaining sixty-nine months of federal incarceration to his Kentucky sentence.

On January 7, 2008, the Department of Corrections moved to dismiss Grubbs' petition on grounds that the issues raised had been previously litigated in

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<sup>2</sup> Grubbs' petition for relief was originally brought against the Kentucky Department of Corrections and its Commissioner, John Rees. The Kentucky Justice and Public Safety Cabinet has been substituted as Appellee on appeal without comment or objection by either party.

the Laurel Circuit Court and were therefore barred by the doctrine of *res judicata*.

The Department attached to its motion an order from the Laurel Circuit Court entered on August 27, 2007, in which that court rejected Grubbs' request that he be given credit for time served in federal custody. The reason was that Grubbs had failed to object to his jail credit calculation at sentencing. The Department also attached an order entered on September 5, 2007, in which the court overruled Grubbs' motion to modify the original March 21, 2006 judgment. On January 18, 2008, the Franklin Circuit Court granted the Department's motion to dismiss Grubbs' petition.

On appeal, Grubbs contends that the circuit court erred in dismissing his petition for declaration of rights. While the trial court did not include an explanation of its reasons, as the Department of Corrections relied solely upon *res judicata* grounds in its motion to dismiss, it is safe to conclude that this argument served as the basis for the court's ruling.

A motion to dismiss should be denied unless it appears that the party against whom dismissal is sought is not entitled to relief under any set of facts that could be proven in support of his claim. *James v. Wilson*, 95 S.W.3d 875, 883 (Ky. App. 2002). For purposes of a motion to dismiss, the facts as set forth in the complaint are considered as true and only the right to relief is challenged. *Huie v. Jones*, 362 S.W.2d 287, 288 (Ky. 1962). The question of whether dismissal is proper is determined as a matter of law and is therefore reviewed *de novo*. *James*, 95 S.W.3d at 883-84.

Grubbs argues that *res judicata* should not have been a factor in dismissing his case. He relies on *Smith v. Yeager*, 393 U.S. 122, 89 S.Ct. 277, 21 L.Ed.2d 246 (1968) and *Yost v. Smith*, 862 S.W.2d 852 (Ky. 1993), *overruled by Commonwealth v. Hale*, 96 S.W.3d 24 (Ky. 2003) in support of this argument. However, as Appellee correctly points out, those cases deal with *habeas corpus* proceedings and the inapplicability of *res judicata* in successive *habeas corpus* cases. *See Smith*, 393 U.S. at 124-25; *Yost*, 862 S.W.2d at 853. The case at hand does not involve a *habeas corpus* petition. Therefore, those decisions are inapplicable.

Under the doctrine of *res judicata*, “a judgment on the merits in a prior suit involving the same parties or their privies bars a subsequent suit based upon the same cause of action.” *City of Louisville v. Louisville Professional Firefighters Ass’n, Local Union No. 345, IAFF, AFL-CIO*, 813 S.W.2d 804, 806 (Ky. 1991); *see also Napier v. Jones By and Through Reynolds*, 925 S.W.2d 193, 195 (Ky. App. 1996). For *res judicata* to preclude a subsequent suit, three requirements must be satisfied: “First, there must be identity of the parties. Second, there must be identity of the two causes of action. Third, the action must be decided on its merits.” *Newman v. Newman*, 451 S.W.2d 417, 419 (Ky. 1970). *Res judicata* does not act as a bar if different issues are involved or if the questions of law are different. *Id.*

From the record, it appears that the elements of *res judicata* have been satisfied. Grubbs does not dispute that the same interested parties were involved in

both the Laurel and Franklin Circuit Court cases.<sup>3</sup> Moreover, the issue raised by Grubbs here, whether he was entitled to have federal time credits applied to his Kentucky sentence, was raised and decided against him by the Laurel Circuit Court. Indeed, Grubbs' appellate brief suggests that he filed this action in the Franklin Circuit Court to obtain review of the Laurel Circuit Court's decision. We also note that Grubbs' brief repeatedly raises issues concerning the Laurel Circuit Court ruling. It goes without saying that issues Grubbs had with the Laurel Circuit Court's decision should have been presented to that court or to the Court of Appeals, not to another circuit court.

In short, the Franklin Circuit Court correctly dismissed Grubbs' petition for declaration of rights because the claim was barred by the doctrine of *res judicata*. The judgment is affirmed.

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<sup>3</sup> *Ewald's Ex'r v. Louisville*, 192 Ky. 279, 232 S.W. 388, 391 (1921) supports the view that for *res judicata* purposes, different agencies of the Commonwealth are one and the same.

ALL CONCUR.

BRIEF FOR APPELLANT:

David B. Grubbs, *pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Joshua Clay Billings  
Justice and Public Safety Cabinet  
Office of Legal Services  
Frankfort, Kentucky