

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002222-MR

BUSTER CHANDLER

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER. L. CRITTENDEN, JUDGE
ACTION NO. 05-CI-00212

PAUL PATTON

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: CAPERTON AND MOORE, JUDGES; GUIDUGLI,¹ SENIOR
JUDGE.

CAPERTON, JUDGE: Buster Chandler (Chandler), pro se, appeals the August 7,
2007, order of the Franklin Circuit Court dismissing his complaint against former
governor Paul Patton for failure to state a claim for which there is a judicial

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.

remedy. Having concluded that the trial court correctly dismissed this action, we affirm.

On February 15, 2005, Chandler filed a pro se complaint in the Franklin Circuit Court against Governor Patton in his individual capacity, as well as “All Other Unknown John and Mary Does Defendants” concerning Governor Patton’s denial of his July 3, 2002 request pursuant to Section 77 of the Kentucky Constitution for a full pardon of his conviction for first degree murder.

Specifically, Chandler asserted that Governor Patton never reviewed his request for a pardon, nor did he contact the Governor of Tennessee or the Knox County Attorney General to discuss the murder for which Chandler was convicted, and which he now asserts took place in Knoxville, Tennessee. Chandler asserts that he was wrongfully convicted, and apparently desires the pardon so that he can be transferred to Tennessee to undergo trial there.

In his complaints, Chandler asserted that Governor Patton violated his “Right of Due Course of Kentucky Constitution 2, 3, 10, 11” by not giving Chandler’s pardon application a full and fair review. Further, Chandler asserted that Patton violated his “Rights of Equal Protection and Procedural Fairness of Kentucky Constitution of 1, 2, 3, and 59” by not giving a full and fair review to Chandler’s application for a pardon. Chandler further requested \$50,000.00 in damages for “violation of his rights”. In addition, Chandler requested a trial by jury.

We will reverse a trial court's dismissal of a complaint for failure to state a claim only if it appears that the facts alleged in the complaint were proved, the plaintiff would be entitled to relief. *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. App. 2002), citing *Pari-Mutuel Clerks' Union v. Kentucky Jockey Club*, 551 S.W.2d 803 (Ky. 1977). In answering that question, we turn first to the authority granted to the Governor by the Kentucky Constitution.

Section 77 of the Kentucky Constitution empowers the Governor to pardon or commute a sentence of imprisonment. However, that power lies solely within the Governor's discretion. Certainly, the party requesting the pardon has no legally cognizable right to a pardon or commutation of his or her sentence. Section 77 of the Kentucky Constitution in no way establishes specific procedures to be followed, and imposes no standards, criteria, or factors that the Governor need consider in exercising his power. *In re Sapp*, 118 F.3d 460 (6th Cir. 1997). As the *Sapp* court correctly noted, there exists no precedent in our law that the grantor of clemency need do anything at all with the request. That case provided clearly that the governor may agonize over every petition; he may glance at one or all such petitions and toss them away, or he may direct his staff as to the means for considering them.

While Chandler asserts that his due process rights have been violated, and that his equal protection rights have been violated, we find no evidence that this was the case. As previously noted, Chandler has no life or liberty interest in clemency which is protected by the Due Process Clause, nor does he have a "right"

at issue protected by the provisions allowing for equal protection and procedural fairness. While Chandler repeatedly and adamantly asserts that his request was denied because he was black, it is far more likely that the request was denied because Chandler was convicted of first degree murder.

Whatever the reason for denying the application, that determination lies solely in the governor's discretion, and we decline to find otherwise on appeal. Indeed, as the governor is vested with a broad and virtually unfettered discretion to pardon, the courts of this state are without constitutional authority to pass on the wisdom of such an action. Doing so would be a brazen violation of the separation of powers. *Fletcher v. Graham*, 192 S.W.3d 350 (Ky. 2006).

As to Chandler's claim that his conviction was wrongful and should be overturned, a civil action against the Governor is not the proper avenue for the pursuit of such a claim. Having not been provided with Chandler's criminal records, we are unable to comment upon whether or not he previously followed the proper procedures to challenge his sentence. However, we do note that a petition for pardon is not an alternative to a proper appeal to a criminal conviction.

In light of the foregoing we find no meritorious basis for appeal, and find no error in the governor's decision to deny pardon to Chandler. Accordingly, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE:

Buster Chandler, *Pro Se*
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