RENDERED: AUGUST 21, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001789-MR

JASON VANHOOK — APPELLANT

v.

APPEAL FROM LYON CIRCUIT COURT
HONORABLE CLARENCE A. WOODALL III, JUDGE
ACTION NO. 08-CI-00108

JULIE THOMAS, BRANCH MANAGER,
OFFENDER INFORMATION SERVICES,
DEPARTMENT OF CORRECTIONS — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, KELLER, AND LAMBERT, JUDGES.

CLAYTON, JUDGE: Appellant, Jason Vanhook (Vanhook), appeals the dismissal of his petition for declaration of rights filed in the Lyon Circuit Court. We find that Vanhook's arguments are without merit.

Vanhook was convicted of arson in the first degree in Lincoln Circuit Court in 2002. The conviction was based on an incident which took place on October 3, 2001. He contends that his classification as a violent offender under Kentucky Revised Statutes (KRS) 439.3401 was in error as it would be an ex post facto violation of the Constitution. We disagree.

"A law is retrospective if it 'changes the legal consequences of acts completed before its effective date." *Purvis v. Com.*, 14 S.W.3d 21, 23 (Ky. 2000). In *Purvis*, the Kentucky Supreme Court held that "[t]he standard for determining whether a law violates the ex post facto prohibition is two-part. First, the law 'must be retrospective, that is, it must apply to events occurring before its enactment[.]'" (*quoting Weaver v. Graham*, 450 U.S. 24, 29, 101 S.Ct. 960, 67 L.Ed.2d 17(1981)).

KRS 439.3401 provides that:

> (1) As used in this section, 'violent offender' means any person who has been convicted of or pled guilty to the commission of:
>
> (a) A capital offense;
>
> (b) A Class A felony. . . .

This statute was enacted in 1986 and the above cited language was in the original statute, having not changed. Clearly, Vanhook's conviction of a Class A felony fell within the purview of this statute and was appropriately considered to be a violent offense. Vanhook's appeal of this issue must be denied.

Vanhook next contends that he has a liberty interest in his parole eligibility date. In *Stewart v. Com.*, 153 S.W.3d 789, 793 (Ky. 2005), the Kentucky Supreme Court specifically set forth that "[p]arole is a privilege and its denial has no constitutional implications." *See also Land v. Com.*, 986 S.W.2d 440 (Ky. 1999); *Garland v. Com.*, 997 S.W.2d 487 (Ky. App. 1999). Since parole is not a right, it follows that a defendant would not have a liberty interest in a parole eligibility date. Thus, we deny Vanhook's appeal on this issue as well.

We affirm the decision of the Lyon Circuit Court

ALL CONCUR.

BRIEF FOR APPELLANT:

Jason Vanhook, *pro se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Brenn O. Combs
Kentucky Justice & Public Safety Cabinet
Frankfort, Kentucky