

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000239-MR

PATRICK SEEWRIGHT

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 09-CI-01992

COMMONWEALTH OF KENTUCKY;
DEPARTMENT OF CORRECTIONS;
GARY BEACH, PAROLE OFFICER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS AND CAPERTON, JUDGES; LAMBERT,¹ SENIOR
JUDGE.

COMBS, JUDGE: Patrick Seewright appeals an order of the Franklin Circuit

Court dismissing his petition for declaratory or injunctive relief. After reviewing
the law and record, we affirm.

¹ 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 KRS 21.580.

Seewright was originally incarcerated in 1991. He was granted parole, which he entered on April 6, 1995. On October 7, 1997, the Parole Board issued a Parole Violation Warrant after his parole officer reported that he had failed to report, had changed his home address without permission, and had been indicted on a new felony. At that time, Seewright had not been convicted of a new felony. However, before a hearing could be conducted regarding the parole violations, Seewright was convicted of a new felony on January 28, 1998. The Department of Corrections thereafter refused to include Seewright's time on parole in the calculation of his time served.

After exhausting the administrative appeal process, Seewright filed a petition for declaratory or injunctive relief in Franklin Circuit Court, claiming that he should receive credit for time served for his parole period of April 6, 1995, through January 28, 1998. The trial court dismissed the order, citing Kentucky Revised Statute[s] (KRS) 439.352. This appeal followed.

The trial court based its dismissal upon a statute. Therefore, our review is *de novo*. *Revenue Cabinet v. Hubbard*, 37 S.W.3d 717, 718 (Ky. 2000). The statute upon which the dismissal was based is KRS 439.352. However, in accordance with a recent decision of this court directly pertinent to this issue, we conclude that KRS 439.344 is the controlling statute for Seewright's issue. *Hill v. Thompson*, 297 S.W.3d 892, 895 (Ky. App. 2009). Although we disagree with the trial court's choice of the pertinent statute, we may affirm its decision for other

reasons. See *O'Neal v. O'Neal*, 122 S.W.3d 588, 589 (Ky. App. 2002) (citing *Old Republic Ins. Co. v. Ashley*, 722 S.W.2d 55, 58 (Ky. App. 1986)).

KRS 439.344 provides that “[t]he period of time spent on parole shall count as a part of the prisoner’s sentence, except when a parolee is: (1) [r]eturned to prison as a parole violator for a new felony conviction[.]” In *Hill*, as here, the defendant had returned to prison as a result of a non-felony parole violation shortly before being convicted of a new felony. Our court acknowledged that if the statute were taken literally, Hill would deserve to be credited with additional days served. However, it held that such an interpretation would violate the legislative intent of the law. *Hill v. Thompson*, 297 S.W.3d at 896.

The *Hill* Court held that the legislature had created the law allowing credit for time on parole in order to create an incentive for parolees not to commit more felonies. The Court reasoned as follows:

A literal interpretation of this exception would lead to situations like the matter *sub judice*, where a lifelong perpetual criminal is receiving credit for time spent while out on the streets, even when committing new felonies and abusing all aspects of our justice system. Accordingly, we must agree with the DOC that a literal interpretation goes against both the spirit and intent of the law, as well as against the general well-being and safety of the Commonwealth. We simply cannot believe that the legislature intended the absurd result which would follow from a literal interpretation of the statute[.]

Id.

We believe that the holding of *Hill* governs in this case. Therefore, Seewright is not entitled to credit for his time spent on parole as time served following his commitment of another felony while on parole.

We affirm the dismissal of his petition by the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Patrick Seewright, *pro se*
Fredonia, Kentucky

BRIEF FOR APPELLEES:

J. Todd Henning
Frankfort, Kentucky