

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000135-MR

ROY STACEY

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 09-CI-00336

DAVID DONAHUE AND
CHRISTOPHER KAMPSCHAEFER

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KELLER, MOORE AND STUMBO, JUDGES.

STUMBO, JUDGE: Roy Stacey appeals from an Order of the Oldham Circuit Court dismissing his *pro se* Petition for Declaration of Rights. Stacey, a former inmate at the Kentucky State Reformatory, sought to have a prison disciplinary infraction expunged from his prison record, and to have sixty days of good time credit restored. His appeal to the Oldham Circuit Court was dismissed after the

matter was rendered moot by Stacey's release from custody. We find no error, and accordingly affirm.

On January 10, 2009, inmate Stacey was charged by way of a Disciplinary Report Form Part I with the disciplinary infraction of "pursuing or developing a relationship with a non-inmate." A prison disciplinary hearing was conducted on January 14, 2009, resulting in the adjustment officer rendering a finding of guilt. Stacey received a penalty consisting of the forfeiture of sixty days of good time credit, 45 days of segregation and the restriction of telephone privileges. Stacey's appeal to Warden David Donahue was denied on February 10, 2009.

On April 1, 2009, Stacey filed a Petition for Declaration of Rights in Oldham Circuit Court, in which he sought to have the incident expunged from his prison record and the 60 days of good time credit restored. On April 29, 2009, Stacey was released from the custody of the Department of Corrections and placed in the custody of the Federal Bureau of Prisons. He was subsequently transported to Marion, Illinois, where he began serving a federal sentence.

On August 6, 2009, Warden Donahue, et al., filed a motion in Oldham Circuit Court seeking the dismissal of Stacey's Petition. As a basis for the motion, Donahue noted that Stacey had been released from custody, thus rendering the Petition moot. The motion was sustained by way of an Order rendered on August 10, 2009, and this appeal followed.

Stacey now argues *pro se* that the Oldham Circuit Court erred in dismissing his Petition as moot. He maintains that the issue of lost good time credit was not moot, because said loss delayed his transfer to federal custody from February, 2009, to April, 2009. That is to say, Stacey contends that if he had not lost the good time credit, his federal sentence would have begun 60 days earlier, resulting in an earlier discharge eligibility date from federal custody. Additionally, Stacey argues that he did not receive due process because the merits of his Petition were never addressed, that he should have received a continuance in the matter before the circuit court, and that the prison incident report lacked sufficient specificity. Stacey also contends that the testimony of Captain Durett at the prison hearing was “unlawful” and should have been stricken because it contained hearsay. In sum, he seeks an Order reversing the circuit court and restoring the lost 60 days of good time credit.

We have closely examined Stacey’s argument, and find no error in the Order on appeal. Stacey was released from the custody of the Department of Corrections on April 29, 2009, and was transported to Marion, Illinois to begin serving a federal sentence. The dispositive question, then, is whether the circuit court properly determined that Stacey’s release from custody rendered moot his Petition for Declaration of Rights. We must answer that question in the affirmative. In order to adjudicate a claim, a court must have jurisdiction over an actual case or controversy. *Commonwealth v. Hughes*, 873 S.W.2d 828 (Ky. 1994). In *Hughes*, a controversy regarding the confidentiality of communications

between parishioners and church was rendered moot by the formal discharge of the grand jury which issued a subpoena for the protected documents. The Kentucky Supreme Court determined that when there is a change in circumstances of the underlying controversy sufficient to terminate “the vitality of the action,” the mootness of the controversy terminates the court’s jurisdiction. *Id.*

In the matter at bar, Stacey’s discharge from the custody of the Kentucky Department of Corrections constitutes a change in circumstances sufficient to terminate the vitality of his Petition for mootness. That is to say, when Stacey left the custody of the Commonwealth’s penal system, there no longer existed any controversy as to whether he was improperly deprived of good time credit. Stacey argues that the issue of his loss of good time credit survives his discharge from custody because he could not begin serving the federal sentence until he was discharged from the custody of the Kentucky Department of Corrections. In other words, he contends that the loss of good time credit delayed the start of the federal sentence, thereby improperly delaying his ultimate release from federal custody at the conclusion of the federal sentence. This argument is misplaced, however, because Stacey began serving the federal sentence during the pendency of the action before the circuit court. As such, it cannot reasonably be argued that his loss of good time credit, even if improper, created a controversy which survived his discharge from custody. The restoration of Stacey’s good time credit after his discharge from the custody of the Commonwealth would not hasten his release from federal custody. Accordingly, under *Hughes*, the vitality of his

action terminated at the time of discharge from custody, and the circuit court properly so found.

Stacey also claims that he was denied Due Process, that he should have received a continuance before the circuit court, that the testimony of Captain Durett was improperly considered, and that the prison disciplinary report lacked specificity sufficient to sustain a finding of guilt on the underlying charge. For the foregoing reasons, these arguments are moot because Stacey is no longer in the custody of the Kentucky Department of Corrections. We affirm the Order of the Oldham Circuit Court sustaining the motion of Donahue, et al. to dismiss Stacey's Petition for Declaration of Rights.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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