

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001968-MR

GREGORY WILSON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 11-CI-01395

DEPARTMENT OF CORRECTIONS,  
COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: STUMBO, CLAYTON AND LAMBERT, JUDGES.

STUMBO, JUDGE: The Appellant, Gregory Wilson, appeals an order entered October 10, 2011, by Franklin Circuit Court dismissing his Petition for Writ of Prohibition and Declaration of Rights. However, because the Circuit Court correctly determined that Mr. Wilson failed to state a claim upon which relief could be granted, we affirm.

Mr. Wilson was convicted of Incest in violation of KRS 530.020 by the Hardin Circuit Court on March 3, 2009. Incest is a “sex crime” as defined by KRS 17.500(8) and is subject to the conditional discharge requirements set forth in KRS 532.043. Appellant submitted a Petition for a Writ of Prohibition and Declaration of Rights arguing that the application of KRS 532.043 to his sentence violated the *ex post facto* prohibition set forth in the constitution. The Franklin Circuit Court denied Mr. Wilson’s request for a hearing and dismissed the Petition pursuant to CR 12.02 (f) (“failure to state a claim on which relief can be granted”).

The decision to terminate an action for failure to state a claim on which relief can be granted is a question of law and must be reviewed *de novo*. *James v. Wilson*, 95 S.W.3d 875 (Ky. App. 2002).

In order for the application of a statute to violate the *ex post facto* provision of the United States Constitution or the Constitution of Kentucky, it must be applied to events that occurred before its enactment and it must disadvantage the offender affected by its application. *Purvis v. Commonwealth*, 14 S.W.3d 21, 23 (Ky. 2000). KRS 532.043(6) instructs that the provisions of KRS 532.043 “shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998. The provision in question here, KRS 532.043(2), was modified by the Legislature in 2006 to require a five-year conditional discharge period, as opposed to the original three-year requirement. H.B. 3, 2006 Gen. Assem., Reg. Sess. (KY 2006). Because the modification became effective before

the date of Mr. Wilson's crime, conviction and sentencing, no retrospective application occurred.

Mr. Wilson briefly makes the claim that KRS 532.043 is unconstitutional in general; however, this issue is waived because Mr. Wilson pled guilty. *Wilfong v. Commonwealth*, 175 S.W.3d 84, 94 (Ky. App. 2004) (holding that because the defendant pled guilty, he could not establish prejudice and only those prejudiced by an unconstitutional law can complain of it).

For the foregoing reasons, the decision of the Franklin Circuit Court both to deny the hearing and to dismiss the action pursuant to CR 12.02 is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gregory Wilson, *pro se*  
LaGrange, KY

BRIEF FOR APPELLEE:

Wesley W. Duke  
Justice and Public Safety Cabinet  
Department of Corrections  
Frankfort, KY