

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000109-MR

JESSIE SEBASTIAN

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE CLARENCE A. WOODALL III, JUDGE
ACTION NO. 11-CI-00191

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, LAMBERT, AND VANMETER, JUDGES.

VANMETER, JUDGE: Jessie Sebastian, pro se, appeals from a Lyon Circuit Court order dismissing his petition for writ of prohibition. We affirm.

Sebastian is currently incarcerated at the Kentucky State Penitentiary, serving multiple sentences. His most recent convictions occurred in November 2010, when he entered a plea of guilty in Caldwell Circuit Court to third-degree burglary and theft by unlawful taking, and a plea of guilty in Lyon Circuit Court to

second-degree escape. Under the terms of the plea agreement, he received a sentence of twenty years under each indictment, to be served concurrently to one another but consecutively to any other sentences. The Department of Corrections (DOC) calculated his total sentence length to be thirty-three years, with a parole eligibility date of October 2020.

Sebastian filed a petition for writ of prohibition, naming as respondents the Commonwealth of Kentucky, the DOC, and his public defender, Kenneth R. Root. He argued that under the terms of the plea agreement as he understood it, he should be eligible for parole after serving four years, or twenty percent, of his concurrent twenty-year sentences. Attached to his petition was a letter from Kenneth Root, dated May 12, 2010, encouraging Sebastian to consider the plea offer of concurrent twenty-year sentences. The letter states that “With this done all charges will be at a 20% rather than 85% of time until you could go before the parole board.”

The Department of Corrections filed a motion to dismiss the petition on the ground that Sebastian had failed to exhaust his administrative remedies. Root filed a motion to be dismissed as a party or, alternatively, a motion to construe the complaint as a motion for relief pursuant to CR¹ 60.02. Root stated that all parties to the plea agreement believed that Sebastian would be eligible for review by the parole board in four years. Root further explained that after the entry of Sebastian’s plea, he became aware that this eligibility date was not in

¹ Kentucky Rules of Civil Procedure.

accordance with the DOC's administrative regulations, specifically 501 KAR²

1:030 Section 3, governing parole eligibility for crimes committed in the process of or while an inmate has escaped.

The trial court entered an order dismissing the writ on the grounds that Root was not an appropriate party and because Sebastian had failed to exhaust his administrative remedies. This appeal followed.

KRS³ 454.415 specifically forbids inmates from bringing civil actions before they have exhausted their administrative remedies. *Hensley v. Commonwealth*, 355 S.W.3d 473, 475 (Ky. App. 2011). The statute states in relevant part that

(1) No action shall be brought by or on behalf of an inmate, with respect to:

- (a) An inmate disciplinary proceeding;
- (b) Challenges to a sentence calculation;
- (c) Challenges to custody credit; or
- (d) A conditions-of-confinement issue;

until administrative remedies as set forth in the policies and procedures of the Department of Corrections, county jail, or other local or regional correctional facility are exhausted.

(2) Administrative remedies shall be exhausted even if the remedy the inmate seeks is unavailable.

² Kentucky Administrative Regulations.

³ Kentucky Revised Statutes.

(3) The inmate shall attach to any complaint filed documents verifying that administrative remedies have been exhausted.

(4) A court shall dismiss a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section if the inmate has not exhausted administrative remedies[.]

CPP⁴ 17.4 outlines the proper procedure an inmate must follow to request a review or explanation of the method of sentence calculation, including parole eligibility. This procedure commences with a request to the Offender Information Services office at the institution where the inmate is presently confined. CPP 17.4(1)(A). An appeal from such a written review or explanation is to be directed to the Offender Information Services Branch in Frankfort, Kentucky. CPP 17.4(1)(C).

There is no evidence that Sebastian followed this procedure before filing the writ. Thus, the trial court correctly dismissed the writ as it was bound to do by KRS 454.415 (4).

Finally, although Sebastian's petition named the Department of Corrections as a defendant, his claim does not appear to be directed at a purported error in sentence calculation by the DOC, but rather is an allegation of misadvice concerning his parole eligibility prior to the entry of his guilty plea. Although we do not comment on the merit of this claim, it should be noted that questions regarding the voluntariness of a guilty plea are more appropriately resolved by means of a motion pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42.

⁴ Kentucky Corrections Policies and Procedures.

The order dismissing the writ is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE

Jessie Sebastian, *Pro se*
Eddyville, Kentucky