

RENDERED: OCTOBER 4, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001469-MR

SHAWN MICHAEL MALONE

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE GREGORY A. LAY, JUDGE
ACTION NO. 01-CR-00197

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; COMBS AND TAYLOR, JUDGES.

COMBS, JUDGE: Shawn Malone, *pro se*, appeals the order of the Laurel Circuit Court denying his motion for specific performance and enforcement. After reviewing the record and the applicable law, we affirm.

Malone is serving a sentence of thirty-five years as a result of crimes that he committed during an escape from prison in 2001. On July 5, 2012, Malone filed a

motion for specific performance and enforcement in Laurel Circuit Court alleging that the Department of Corrections erroneously calculated his date of parole eligibility. Malone sought injunctive relief against the Department of Corrections. The trial court denied the motion on July 26, 2012, finding that it lacked jurisdiction over the Department of Corrections. This appeal followed.

We agree that the circuit court lacked injunctive jurisdiction over this matter. Inmates' disputes with the Department of Corrections must be litigated as petitions for declaratory judgment pursuant to Kentucky Revised Statute[s] (KRS) 418.040. *Smith v. O'Dea*, 939 S.W.2d 353, 355 (Ky. App. 1997). Calculation of parole eligibility is specifically subject to the declaratory judgment procedure. *Mason v. Commonwealth*, 331 S.W.3d 610, 629 (Ky. 2011).

Additionally, the Department of Corrections is not a party to this appeal nor its underlying motion. Accordingly, the matter was not properly before the circuit court or before this court. *Id.* Therefore, we are compelled to affirm the Laurel Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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