

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-001438-MR

CHRISTOPHER HOPPER

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 13-CI-00183

LADONNA THOMPSON, IN HER OFFICIAL  
CAPACITY AS COMMISSIONER OF THE  
KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, NICKELL, AND THOMPSON, JUDGES.

NICKELL, JUDGE: Christopher Hopper petitioned the Franklin Circuit Court for a declaration of rights claiming the Department of Corrections (DOC) had misapplied KRS<sup>1</sup> 532.120 and miscalculated his parole eligibility date. In response, DOC urged dismissal of the motion for failure to state a claim upon

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<sup>1</sup> Kentucky Revised Statutes.

which relief could be granted. Hopper, *pro se*, now challenges the trial court's dismissal of the petition. We affirm.

## FACTS

Hopper is an inmate at the Kentucky State Reformatory, having amassed convictions in four separate indictments from two counties.

1. On October 7, 2005, in Nelson Circuit Court Case No. 05-CR-207, he was convicted of trafficking in a controlled substance, a Class C felony, for which he was sentenced to serve ten years, and unlawful possession of methamphetamine precursor, first offense, a Class D felony, for which he was sentenced to serve five years for a total of fifteen years.
2. On April 17, 2006, in Warren Circuit Case No. 05-CR-01022, he was convicted of possession of a controlled substance, a Class D felony, for which he was sentenced to serve two years, consecutive to the sentence imposed in Nelson Circuit Court Case No. 05-CR-207.
3. On May 15, 2006, in Nelson Circuit Court Case No. 06-CR-026, he was convicted of receiving stolen property over \$300.00, a Class D felony, for which he was sentenced to serve two years, concurrent to the sentence imposed in Nelson Circuit Court Case No. 05-CR-207.
4. On January 29, 2009, in Warren Circuit Court Case No. 08-CR-90, he was convicted of manufacturing methamphetamine, a **Class C felony**, and being a **persistent felony offender in the first degree (PFO I)**, for which he was sentenced to serve ten years, consecutive to his previous sentences from both Warren and Nelson Counties. This crime was committed while Hopper was an

escapee<sup>2</sup> and resulted in Hopper's designation as a PFO I. He began serving this ten year sentence on January 29, 2009, the same day he was sentenced by the Warren Circuit Court.

As a PFO I, calculation of Hopper's parole eligibility date is governed by KRS 532.080(7) which reads:

[a] person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person or a sex crime as that term is defined in KRS 17.500, in which case, probation, shock probation, or conditional discharge may be granted. **If the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years, unless another sentencing scheme applies.** A violent offender who is found to be a persistent felony offender in the first degree shall not be eligible for parole except as provided in KRS 439.3401.

(Emphasis added). The Parole Board initially reviewed Hopper's parole eligibility in September 2008—before he was designated a PFO I in January 2009—and deferred his case for twenty-four months, until September 2010. After January, 2009—because he was then designated a PFO I—his parole eligibility date was recalculated to January 2019, reflecting the minimum ten years he must serve due to his designation as a PFO I. KRS 532.080(7) is consistent with 501 KAR 1:030 Section 3(c) which specifies first review of a PFO I sentence in conjunction with a

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<sup>2</sup> Hopper admits in his Petition for Declaration of Rights that his sentence was interrupted from November 29, 2007, until January 15, 2008, due to his escape.

Class C felony occurring after December 3, 1980, will not occur until the inmate has completed service of ten years.

As of the filing of the Cabinet's brief on January 10, 2014, Hopper's parole eligibility date was January 2019; his maximum expiration date was April 26, 2032; and his minimum expiration date was November 14, 2020. In contrast, Hopper argues he has committed no violations or offenses as an inmate and application of all the sentencing, meritorious, educational and program completion credits he has earned should make him parole eligible in 2015—not 2019—as the DOC has calculated.

Hopper acknowledges he became subject to KRS 532.080(7)—requiring him to serve a ten-year sentence because he was convicted of a Class C felony—when he was designated a PFO I in January 2009, but claims he has already served those ten years—even though it is only 2014—and his sentence is no longer subject to KRS 532.080(7). He claims his parole eligibility date should be calculated under KRS 532.120(5) and the time he served prior to being designated as a PFO I—about four years—should be credited against the ten years he must serve before becoming parole eligible. In other words, he argues his service of the mandatory ten years began in May 2005 even though he was not designated as a PFO I and convicted of a Class C felony until January 2009.

In a succinct order, the Franklin Circuit Court rejected Hopper's analysis and dismissed the petition, writing in relevant part:

KRS 532.080(7) states, “[i]f the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years, unless another sentencing scheme applies.” Because [Hopper] was found to be a PFO, who was convicted of a Class C felony, he must serve out the ten-year sentence pursuant to the foregoing statute before he is eligible for parole.

This appeal followed.

## ANALYSIS

There is no dispute that Hopper exhausted his administrative remedies before seeking relief in the Franklin Circuit Court. A court should not grant a motion to dismiss for failure to state a claim upon which relief may be granted “unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved.” *Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977).

“[T]he pleadings should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true.” *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009). Because the issue is a pure question of law, this Court owes no deference to the trial court's determination and we therefore review the issue *de novo*. *Id.*

That being said, we agree with the trial court's succinct analysis and adopt it as our own. Hopper must serve ten years from the time he was designated as a PFO I before becoming parole eligible. Were we to accept Hopper's

calculation, his designation as a PFO I would be virtually meaningless as there would be no enhancement for his repetitive felonious behavior.

For the foregoing reasons, the May 23, 2013, order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Christopher Hopper, *pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Linda M. Keeton  
Frankfort, Kentucky