

RENDERED: DECEMBER 5, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000239-MR

MARVIN PHIPPS

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE CLARENCE A. WOODALL III, JUDGE
ACTION NO. 13-CI-00127

WARDEN BECKY PANCAKE, W.K.C.C.;
AND LADONNA THOMPSON, DEPARTMENT
OF CORRECTIONS COMMISSIONER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, LAMBERT, AND TAYLOR, JUDGES.

DIXON, JUDGE: Marvin Phipps, *pro se*, appeals an order of the Lyon Circuit Court dismissing his petition for a declaration of rights. We affirm.

Phipps, an inmate at Northpoint Training Center, sought an administrative review of his sentence calculation, alleging he was improperly denied eighty-four

days of meritorious good time sentence credit. The Department of Corrections (DOC) advised Phipps that his sentence calculation was correct and that the decision to deny meritorious good time credit was within the discretion of the warden at the institution. After his request for credit was denied, Phipps filed a petition for declaration of rights in Lyon Circuit Court. Phipps asserted the DOC violated his Due Process and Equal Protection rights by denying his request for meritorious good time credit. In response, the DOC moved to dismiss the petition for failure to state a claim upon which relief can be granted. Kentucky Rules of Civil Procedure 12.02(f). The circuit court ultimately granted the DOC's motion and dismissed the petition. This appeal followed.

A dismissal for failure to state a claim presents only questions of law; accordingly, our review is de novo. *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009).

Phipps argues the DOC deprived him of meritorious good time credit without due process. He also asserts a violation of equal protection, contending he was denied meritorious good time credit due to his status as a sex offender.

Based upon our review of the record and applicable law, we conclude Phipps's arguments are without merit. In *Hill v. Thompson*, 297 S.W.3d 892 (Ky. App. 2009), this Court succinctly explained:

The law in this Commonwealth as it pertains to awards of meritorious good time is clear. Such awards are entirely discretionary and inmates possess no automatic entitlement to them. Further, while it is true that an individual is entitled to due process under the

Fourteenth Amendment before his life or property can be taken from him, an inmate making such a claim must demonstrate that he was deprived of a protected liberty or property interest by arbitrary governmental action. It is the well-established law of this Commonwealth that an inmate has no liberty interest in the receipt of meritorious good time . . . since it is awarded entirely at the discretion of the DOC.

Id. at 897 (internal citations omitted). Although Phipps believes he was entitled to meritorious good time credit because he maintained good behavior, the law is clear that the credit is neither mandatory nor automatic. *See id.* We conclude the DOC acted within its discretion and did not violate Phipps's right to due process by denying meritorious good time credit.

We are also not persuaded that Phipps's right to equal protection was infringed by the DOC's denial of meritorious good time credit. The record on appeal does not support Phipps's bare assertion that he was denied meritorious good time credit because of his status as a sex offender. A prisoner cannot establish "a violation of his equal protection rights simply by showing that other inmates were treated differently. He would have to show that he was victimized because of some suspect classification, which is an essential element of an equal protection claim." *Newell v. Brown*, 981 F.2d 880, 887 (6th Cir.1992). Having failed to do that, we are compelled to conclude Phipps was not deprived of his right to equal protection.

For the reasons stated herein, we affirm the Lyon Circuit Court's order of dismissal.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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