

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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000373-MR

JEFFREY HOLLAND

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 13-CI-00858

KENTUCKY DEPARTMENT OF
CORRECTIONS; LADONNA THOMPSON,
COMMISSIONER; MARC ABELOVE,
OFFENDER INFORMATION; AND
HOLLY BROWN, CLASSIFICATION
AND TREATMENT OFFICER

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE; JONES AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Jeffrey Holland appeals from the Franklin Circuit Court's
order dismissing his petition for declaration of rights finding that he was not

eligible for good time credit for completing a substance abuse treatment program while incarcerated. After careful review, we affirm.

Holland completed a substance abuse program provided by the Department of Corrections (DOC) on July 14, 2008. The DOC granted Holland a ninety-day sentence credit for completing the program while he was at the Luther Lockett Correctional Complex. Holland was subsequently transferred to another correctional facility, and at that facility, he entered another substance abuse program called the Phoenix Program. Holland completed that program on June 13, 2012.

On April 22, 2013, Holland submitted a request for a review of his sentence calculation. He stated that he had been promised meritorious good time credit for completing the substance abuse program in June 2012, but the credit had not been applied. Holland requested that he be granted meritorious good time for completing the program the second time. He was informed that correctional policy only allowed an award of ninety days good time credit once per incarceration and that he had already been awarded credit for completing a program.

Holland appealed the decision concerning his institutional office record, arguing that he should have received educational good time credit for completing the substance abuse program. Holland raised Kentucky Revised Statutes (KRS) 197.045(1) and this Court's recent decision in *Roberts v. Thompson*, 338 S.W.3d 519 (Ky. App. 2012), as grounds for receiving credit.

On July 7, 2013, the Appellees issued a response upholding the denial of credit, informing Holland that the DOC's policy did not allow inmates to receive duplicative credit for completing identical treatment programs. The DOC noted that KRS 197.045(1)(a)(3) requires the granting of credit for completing a drug treatment program but that the DOC has discretion to define the programs.

On July 19, 2013, Holland filed a petition seeking judicial review of the DOC's decision. Holland filed a motion for default judgment on November 26, 2013. However, that petition was not served on any of the Appellees until January 7, 2014, and service was not completed until January 8, 2014. The Appellees' response to the motion for default judgment was filed sixteen days later on January 24, 2014.

The Franklin Circuit Court issued an order denying Holland's petition, finding that he received non-educational good time credit for completing a substance abuse program in 2008 and that KRS 197.045(1)(a)(3) gave the DOC discretion in awarding that credit. The circuit court found that Holland had completed a drug treatment program allowing non-educational good time credit under KRS 197.045(1)(a)(3), but that he had **not** completed an educational program requiring mandatory educational good time credit under KRS 197.045(1)(a)(2). Thus, the petition was dismissed for failure to state a claim upon which relief could be granted. This appeal now follows.

Holland argues that the circuit court abused its discretion when it allowed the Appellees to file their response after their response time had lapsed.

Holland alleges that he tendered his petition on July 19, 2013, and that he again served his petition on October 9, 2013. Holland claims that only after he filed his motion for default judgment on November 26, 2013, did the circuit court actually consider his petition, and that the circuit court improperly accepted the Appellees' response to the motion for default judgment on January 24, 2014, some 189 days after his original petition.

A review of the record indicates that Holland filed his original petition on July 19, 2013, and he moved for default judgment in November 2013.

However, the record indicates that the Appellees were not served until January 7, 2014, and none of the summonses for the case were served until January 8, 2014.

The Kentucky Rules of Civil Procedure (CR) state that commencement of an action requires the filing of a complaint and the good faith issuance of a summons or warning order based on the allegations contained in the complaint. CR 3.01; *Steadman v. Gentry*, 314 S.W.3d 760, 762 (Ky. App. 2010). An action is deemed to commence on the date of the first summons or process issued in good faith from the court having jurisdiction of the cause of action. *Id.* at 764 (quoting KRS 413.250). In this case, the first summons was issued on January 7, 2013. Thus, the circuit court did not commit any error in disregarding Holland's motion for default judgment as premature at the time it was filed in November 2013. The Appellees' January 24, 2014, response was timely filed within twenty days of the first summons in accordance with CR 12.01. We find no error in this regard.

Holland next argues that the circuit court erred in ruling that his petition failed to state a claim upon which relief could be granted and in ruling that KRS 197.045(1)(a)(3) gives the DOC discretion in awarding time credit.

KRS 197.045 allows credit against an inmate's sentence for certain achievements. The Kentucky Supreme Court has found that the statute creates three types of good time awards: educational, non-educational, and meritorious. *See Martin v. Chandler*, 122 S.W.3d 540, 551 (Ky. 2003) (finding that non-educational good time and meritorious good time are discretionary). The award of educational good time credit under KRS 197.045(1) has been found to have been mandatory. *Roberts v. Thompson*, 388 S.W.3d 519, 520 (Ky. App. 2012).

Holland claims that he believed he was entitled to educational good time credit for the substance abuse treatment programs he completed. He contends that his designation as educational good time is an innocent mistake and that the trial court improperly denied his petition. We disagree. Inmates have no vested right or entitlement to the non-educational sentence credit awarded for completing treatment programs found in KRS 197.045(1)(a)(3). *Seymour v. Colebank*, 179 S.W.3d 886, 891 (Ky. App. 2005). A careful reading of the statute indicates that inmates shall receive credit for “[s]uccessfully completing a drug treatment program or other evidence-based program **approved by the department**, in the amount of not more than ninety (90) days for each program completed....” KRS 197.045(1)(a)(3) (emphasis added). In this case, the circuit court agreed with this Court's analysis in *Bramblett v. Thompson*, 2013 WL 375532 (2011–CA–001676–

MR) (Ky. App. February 1, 2013), wherein we held that the DOC has discretion to define what treatment programs qualify for the credit.¹

Holland contends that the statute states that inmates **shall** be given credit for completing substance abuse programs and that it is not discretionary. However, a close reading of the statute indicates that the programs have to be approved by the DOC, and thus the DOC maintains discretion over the programs completed and the good time credited for such programs. In this case, the DOC determined that Holland had completed two identical programs and thus was only entitled to ninety days of credited time. We find no error by the DOC in this regard.

Finding no error by the Franklin Circuit Court, we affirm the January 29, 2014, order dismissing Holland's petition for declaration of rights under CR 12.01 for failure to state a claim upon which relief can be granted.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffery Holland, *Pro Se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

John Marcus Jones
Kentucky Department of Corrections
Frankfort, Kentucky

¹ "Opinions that are not to be published shall not be cited or used as binding precedent in any other case in any court of this state; however, unpublished Kentucky appellate decisions, rendered after January 1, 2003, may be cited for consideration by the court if there is no published opinion that would adequately address the issue before the court." CR 76.28(4)(c).