

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000595-MR

DAVID G. WALLS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 14-CI-00488

LADONNA THOMPSON,
DEPARTMENT OF
CORRECTIONS AND
KENTUCKY PAROLE BOARD

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, COMBS, AND JONES, JUDGES.

JONES, JUDGE: David Walls appeals from a Franklin Circuit Court order dismissing his petition for declaration of rights. Walls argues that the Department of Corrections (DOC) misinterpreted 502 Kentucky Administrative Regulations (KAR) 1:030 in calculating his parole eligibility or, in the alternative, that the

promulgation of that regulation violates the separation of powers doctrine. For the reasons set forth below, we AFFIRM.

In December of 2011, Walls was convicted of several Class C and D felonies. He received an aggregate sentence of eight years. In May 2013, he was convicted in Marion County of escape in the second degree, and two other charges. He received a four-year sentence on each charge. Under Kentucky Revised Statutes (KRS) 532.110(3), the sentence on the escape had to run consecutively to any other sentence, including his earlier eight-year sentence. The four-year sentences on the other two charges, which were committed while he was on escape, run concurrently with each other and consecutively to the escape charge and the underlying eight-year sentence.

In October of 2013, Walls was convicted of additional crimes committed while he was on the same escape, including burglary in the second degree, criminal mischief in the first degree and fleeing or evading police in the first degree. He received a five-year sentence on each charge, to run concurrently with each other and consecutively to the Marion County escape charge and the earlier eight-year sentence.

Walls's individual convictions are all twenty percent parole eligible, but the escape conviction triggered the application of 501 KAR 1:030 Section 3(4). This regulation governs parole review for crimes committed while in an institution or while on escape. The pertinent parts of that regulation provide as follows:

(4) Parole review for crimes committed . . . while on escape. If an inmate commits a crime . . . while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(a) Except as provided by paragraph (b) of this subsection, in determining parole eligibility for an inmate who receives a sentence for an escape, . . . or on a sentence for a crime committed while on an escape, **the total parole eligibility shall be set by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:**

1. The amount of time to be served for parole eligibility on the original sentence;

2. If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;

. . . and

4. If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.

501 KAR 1:030 (emphasis supplied).

In calculating Walls's parole eligibility date, the DOC added the original sentence (eight years); the sentence for escape (four years); and the additional sentences for the crimes committed while on escape in Marion and Boyle counties, two four-year sentences (four plus four) and three five-year sentences (five plus five plus five) respectively, for a total of thirty-five years.

Walls argues that the individual sentences for the offenses he committed while on escape should not count consecutively towards the total sentence for purposes of calculating parole eligibility, but should be treated concurrently. He contends that the phrase in section (4)(a) of the regulation, “regardless of whether the sentences are ordered to run concurrently or consecutively,” refers to the enumerated categories that follow, not to the individual sentences within the category of subsection (4).

Under Walls’s interpretation, his total sentence for purposes of calculating parole eligibility is seventeen years, which means that he would become parole eligible after serving 3.4 years, whereas under the DOC’s calculation he becomes eligible after serving seven years.

In our view, the plain language of the regulation requires the DOC to treat the sentences separately. The regulation states that “the total parole eligibility shall be set by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively[.]” The fact that Walls is serving the sentences concurrently is irrelevant to this calculation.

The argument currently being made by Walls was recently addressed by another panel of this Court in *Chase v. Thompson*, 2014 WL 356601, 2013-CA-000304-MR (cited pursuant to Kentucky Rules of Civil Procedure (CR) 76.28(4)(c) as there is no more direct published opinion on this legal point). In *Chase*, the panel held that the DOC’s interpretation of the regulation was correct.

We see no reason to deviate from this reasoning. An administrative body's construction of its own regulation is controlling, particularly when that construction is longstanding and consistent. *McCreary County Bd. of Educ. v. Begley*, 89 S.W.3d 417, 421 (Ky. 2002).

As to Walls's contention that the DOC's interpretation of the regulation violates the separation of powers doctrine by treating his sentences differently for purposes of calculating parole eligibility, "Kentucky courts have repeatedly held that there is no constitutional right to parole, but rather parole is a matter of legislative grace or executive clemency. Parole is simply a privilege and the denial of such has no constitutional implications." *Land v. Commonwealth*, 986 S.W.2d 440, 442 (Ky. 1999) (internal citations omitted).

Whether Walls is afforded the privilege of parole or not, the sentence handed down by the circuit court remains unchanged and unaffected. Thus, the separation of powers is not implicated.

The Franklin Circuit Court's dismissal of the petition is affirmed.

ALL CONCUR.

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