

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001078-MR

FREDDIE HAYES

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 12-CI-01482

JAMES J. VAN NORT

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: J. LAMBERT, TAYLOR AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Freddie Hayes, *pro se*, appeals the Franklin Circuit Court's order granting James J. Van Nort's motion to dismiss and denying Hayes's motion for default judgment and motion for costs, and order denying Hayes's motion to alter or amend.

Hayes is an inmate at the Kentucky State Reformatory (KSR). He requested KSR to conduct a sex offender evaluation on him because the parole board requested one. The evaluation was performed and the resulting report was sent to the parole board, which again denied him parole.

Hayes filed an open records request¹ for his sex offender evaluation report. The request was denied on August 31, 2012, by James J. Van Nort, Assistant Director of the KSR, Division of Mental Health, Sex Offender Services pursuant to Kentucky Revised Statutes (KRS) 61.878(1)(i) and (j).

The attorney general did not receive Hayes's letter dated September 6, 2012, until October 5, 2012, which was outside the twenty-day time period for filing an appeal. In 12-ORD-203, the attorney general denied Hayes's appeal as untimely under KRS 197.025(3).

Hayes filed a petition for declaration of rights with the circuit court and Van Nort filed a motion to dismiss. Van Nort argued Hayes's action was barred by previous denials of his open records requests and this action should be dismissed as frivolous, malicious and harassing pursuant to KRS 454.405. Hayes filed a motion for default judgment, arguing Van Nort's response to his petition was untimely, and filed a motion for costs.

On April 14, 2015, the circuit court denied Hayes's motions and granted Van Nort's motion to dismiss. The circuit court explained Hayes was

¹ Hayes filed numerous open records requests for this same sex offender evaluation report. Previously he appealed one of those denials to the attorney general, who denied his appeal as untimely in 12-ORD-072. He then filed a petition for declaration of rights in 12-CI-00575, which the circuit court denied for failure to exhaust his administrative remedies.

required to comply with KRS 197.025(3) and concluded that because Hayes filed his petition without timely appealing to the Attorney General, it had to dismiss.

Hayes filed a motion to alter or amend pursuant to Kentucky Rules of Civil Procedure (CR) 59.05. He argued he exhausted his administrative remedies by filing a grievance and filing an appeal with the attorney general. The circuit court denied Hayes's CR 59.05 motion.

On appeal, Hayes argues his open records request should have been granted and does not address the circuit court's reason for dismissing his petition.

We consider the dismissal of Hayes petition *de novo* and affirm. The circuit court correctly held it could not consider Hayes's petition on the merits because Hayes failed to properly comply with KRS 197.025(3) and exhaust his administrative remedy before filing his petition, where his appeal to the attorney general was untimely.

Generally, challenges to denials of open records requests can be filed directly in circuit court without prior exhaustion of administrative remedies. KRS 61.882(2). However, that rule does not apply to inmates. KRS 197.025(3) states as follows:

KRS 61.870 to 61.884 to the contrary notwithstanding, all persons confined in a penal facility shall challenge any denial of an open record with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.

Therefore, before Hayes could pursue a remedy before the circuit court, he was required to appeal to the attorney general within twenty days. While Hayes did appeal, he did not do so within twenty days.

If Hayes disagreed with the attorney general's decision dismissing his appeal as untimely, Hayes was entitled to appeal that decision to the circuit court. However, Hayes was not entitled to file a petition to address his open records denial on the merits.

Similarly, after Hayes's petition was dismissed for failure to appropriately exhaust his administrative remedy within the allotted time, he could appeal that decision to the Court of Appeals. Given the posture of this case, Hayes could not directly challenge the denial of his open records request in his appeal because that matter was never considered on the merits by the circuit court.

Accordingly, we affirm the Franklin Circuit Court's order granting Van Nort's motion to dismiss and denying Hayes's motion for default judgment and motion for costs, and order denying Hayes's motion to alter or amend.

ALL CONCUR

BRIEF FOR APPELLANT:

Freddie Hayes, *pro se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

No brief filed.