

RENDERED: NOVEMBER 2, 2018; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-000518-MR

DAVID THOMAS COHRON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 17-CI-00997

DEPARTMENT OF CORRECTIONS,  
SCOTT JORDAN, JAMES E. BACK,  
JERAMIAH BLAIR, LINDSAY MELTON,  
and COURTNEY O'HERN

APPELLEES

OPINION  
AFFIRMING

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BEFORE: KRAMER, J. LAMBERT, AND NICKELL, JUDGES.

NICKELL, JUDGE: David Thomas Cohron brings this *pro se* appeal of an order of the Fayette Circuit Court dismissing his petition for a declaration of rights. He argues the court abused its discretion when it found he had failed to exhaust his administrative remedies. After a careful review of the record and the applicable

law, we affirm.

On February 13, 2017, Cohron arrived unannounced in the medical waiting room at Luther Luckett Correctional Complex. He had been there approximately fifteen minutes earlier to pick up his hearing aids. Cohron asked Nurse Courtney O’Hern why there were no ear plugs in the case with hearing aids. Upon being reminded he would not be receiving ear plugs, Cohron became upset, slammed the hearing aids on a table, and nearly hit Nurse O’Hern with the door as he stormed out of the room. Nurse O’Hern wrote a disciplinary report regarding the incident. Captain James E. Back signed off on the report in his role as supervisor. Sgt. Lindsay Melton was assigned to investigate the matter. Following the investigation, Cohron was charged with “violent demonstration” under CPP<sup>1</sup> 15.2, V(12).

Adjustment Officer Jeramiah Blair (“AO Blair”) conducted Cohron’s disciplinary hearing on February 18, 2017. Cohron was found guilty of the charge. As a result, Cohron lost sixty days of statutory good time credit and was placed in disciplinary segregation for thirty days. Cohron signed the Disciplinary Report indicating he had received a copy. The report clearly documented he had been advised of his right to appeal the decision within fifteen days by submitting a written statement to Warden Scott Jordan.

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<sup>1</sup> Kentucky Correctional Policies and Procedures.

On February 20, 2017, Cohron wrote Warden Jordan requesting an extension of time in which to file his appeal. In a written response, Warden Jordan indicated his belief Cohron had received due process, the evidence presented was sufficient to support a finding of guilt, refused to overturn AO Blair's decision, and denied Cohron's appeal. Cohron wrote a second letter to Warden Jordan referencing his prior letter and request for an extension of time. Warden Jordan responded in writing to inform Cohron appeals must be filed within fifteen days and he was without authority to change the requirement. Warden Jordan further reaffirmed his prior concurrence with AO Blair's decision.

Cohron filed a Petition for Declaration of Rights on January 24, 2018, alleging his due process rights had been violated because Warden Jordan announced his decision before the fifteen days to file an appeal had run. He further alleged AO Blair had refused to review video footage of the incident. On March 13, 2018, the trial court dismissed the petition based on Cohron's failure to exhaust his administrative remedies and his failure to attach proof of such exhaustion to his petition, as required by KRS<sup>2</sup> 454.415. This appeal followed.

Cohron's sole argument on appeal is the trial court abused its discretion in finding he had not exhausted his administrative rights. He claims Warden Jordan's premature action precluded his ability to file an appeal and thus,

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<sup>2</sup> Kentucky Revised Statutes.

he could not attach documentation showing exhaustion of his administrative remedies.

KRS 454.415 provides in pertinent part:

(1) No action shall be brought by or on behalf of an inmate, with respect to:

- (a) An inmate disciplinary proceeding;
- (b) Challenges to a sentence calculation;
- (c) Challenges to custody credit; or
- (d) A conditions-of-confinement issue;

until administrative remedies as set forth in the policies and procedures of the Department of Corrections, county jail, or other local or regional correctional facility are exhausted.

....

(3) The inmate shall attach to any complaint filed documents verifying that administrative remedies have been exhausted.

(4) A court shall dismiss a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section if the inmate has not exhausted administrative remedies[.]

Under KRS 454.415(1)(a), Cohron was required to exhaust his administrative remedies before petitioning for a declaration of rights. He did not do so. Although Cohron argues Warden Jordan's response to his request for an extension of time in which to file his appeal precluded him from exhausting his remedies, he fails to

comprehend the CPP specifically limits the time in which to file his appeal and he did not comply with this express requirement. We discern nothing in Warden Jordan's responses precluding Cohron from perfecting his administrative appeal. In fact, Warden Jordan specifically reminded Cohron of the fifteen-day limit in his second response. Cohron's failure to perfect his appeal in the applicable time was fatal to his petition for declaration of rights under the plain language of the CPP and KRS 454.415(1)(a).

Additionally, under KRS 454.415(3), Cohron was required to attach documents to his petition verifying his administrative remedies had been exhausted. Cohron failed to comply with this requirement. Compliance with KRS 454.415 is mandatory. *See Thrasher v. Commonwealth*, 386 S.W.3d 132, 134 (Ky. App. 2012) (affirming trial court's dismissal of inmate's declaration of rights petition for failure to exhaust administrative remedies under KRS 454.415). Because Cohron failed to exhaust his administrative remedies and attach proof of same to his petition, the trial court did not err in dismissing his petition.

Judgment of the Franklin Circuit Court is AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANT:

David Thomas Cohron, *pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEES:

Richard D. Lilly  
Frankfort, Kentucky