

RENDERED: JANUARY 11, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000237-MR

FRANK BLEVINS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 16-CI-00896

RODNEY BALLARD, COMMISSIONER; AND
KENTUCKY DEPARTMENT OF
CORRECTIONS

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

BEFORE: DIXON, JONES, AND K. THOMPSON, JUDGES.

JONES, JUDGE: Frank Blevins appeals from the Franklin Circuit Court's order entered on December 7, 2017, dismissing his petition for declaration of rights for failure to state a claim upon which relief could be granted. On appeal, Blevins

argues that, under KRS¹ 439.3401, he should only be incarcerated for twenty percent of his five-year sentence, rather than eighty-five percent, before becoming eligible for parole. Because Blevins has now been released from incarceration, we dismiss this appeal as moot.

I. BACKGROUND

On January 18, 2013, Blevins was sentenced to five years' incarceration after pleading guilty to sodomy in the second degree.² Blevins was classified as a violent offender because sodomy in the second degree is "a felony sexual offense described in KRS Chapter 510[.]" KRS 439.3401(1)(f). In a separate case, Blevins was convicted of trafficking in marijuana in Fayette Circuit Court in July 2012. In total, Blevins was sentenced to six years' imprisonment.

On September 12, 2016, Blevins filed a petition for declaration of rights arguing that his sentence should be calculated at twenty percent for parole eligibility, rather than eighty-five percent. Upon a motion of the Department of Corrections, the circuit court dismissed Blevins's action for failure to state a claim upon which relief can be granted. The circuit court found that Blevins was not, in fact, subject to the eighty-five percent sentence requirement for parole eligibility in KRS 439.3401(3). However, the circuit court found that Blevins, like all violent

¹ Kentucky Revised Statutes.

² KRS 510.080, Class C felony.

offenders, was subject to the requirement that “in no event shall a violent offender be given credit on his or her sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.” KRS 439.3401(4). This appeal followed.

II. ANALYSIS

Before we may consider the validity of the circuit court order, we must determine that an actual case or controversy exists. “[A] ‘moot case’ is one which seeks to get a judgment . . . upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a *then* existing controversy.” *Morgan v. Getter*, 441 S.W.3d 94, 98-99 (Ky. 2014) (quoting *Benton v. Clay*, 192 Ky. 497, 233 S.W.1041, 1042 (1921)). “The general rule is, and has long been, that where, pending an appeal, an event occurs which makes a determination of the question unnecessary or which would render the judgment that might be pronounced ineffectual, the appeal should be dismissed.” *Id.* at 99 (citations and internal quotation marks omitted). This is because courts have “no jurisdiction to decide issues which do not derive from an actual case or controversy.” *Commonwealth v. Hughes*, 873 S.W.2d 828, 829 (Ky. 1994) (citations omitted).

Herein, on October 1, 2018, Blevins was released from incarceration after serving out his sentence.³ Therefore, because Blevins is no longer incarcerated, the issue on appeal is now moot.

III. ORDER⁴

There being no justiciable controversy, it is hereby ORDERED that this appeal is DISMISSED as moot.

ALL CONCUR.

ENTERED: January 11, 2019

/s/ Allision Emerson Jones
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

Frank Blevins, pro se
LaGrange, Kentucky

BRIEF FOR APPELLEES:

Brenn O. Combs
Frankfort, Kentucky

³ CourtNet and the Kentucky Online Offender Lookup (KOOL) indicate that Blevins was released from incarceration after serving out his sentence and is now on sex offender post-incarceration supervision.

⁴ Parties should take note that this decision is designated an “opinion and order” and therefore falls under Kentucky Rules of Civil Procedure (CR) 76.38. Petitions for rehearing are thus not authorized under CR 76.32(1)(a).