

RENDERED: MARCH 1, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000460-MR

BRANDON R. BRUIN

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 16-CI-01034

KATHY LITTERAL

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

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

JONES, JUDGE: Acting without the assistance of counsel, the Appellant, Brandon Bruin, seeks review of the Franklin Circuit Court's order dismissing his petition for declaration of rights. Bruin maintains that the circuit court erred as a matter of law when it dismissed his petition for failure to exhaust his

administrative remedies. Having reviewed the record in conjunction with all legal authority, we affirm the circuit court.

The events giving rise to this appeal took place while Bruin was incarcerated at the Eastern Kentucky Correctional Complex (“EKCC”). During his incarceration at EKCC, Bruin was charged with physical action against an employee or non-inmate, pursuing/having a non-correctional relationship with a non-inmate, and possession or promoting of dangerous contraband. He was brought before the prison adjustment committee to answer for the charges. Following a disciplinary hearing, the adjustment committee found Bruin guilty of all charges, and punished him with over a hundred days of disciplinary segregation and forfeiture of over seven hundred days of non-restorable good time credit. Bruin appealed the adjustment committee’s decision to EKCC’s warden, Kathy Litteral. The Warden upheld the adjustment committee’s decision.

Bruin then filed the underlying petition for declaration of rights in the Franklin Circuit Court. In contravention of KRS¹ 454.415(3), Bruin did not attach documents to his complaint showing that he exhausted his administrative remedies with respect to the claims/issues he alleged in his petition. Instead, he attached only a report showing that he had filed an appeal that was denied by the Warden. The report, however, was silent regarding the grounds Bruin asserted in his appeal.

¹ Kentucky Revised Statutes.

As a result, the circuit court dismissed Bruin's petition for failure to adequately plead exhaustion of his administrative remedies. This appeal followed.

Bruin contends that the circuit court improperly dismissed his petition for declaration of rights. Bruin alleges that he exhausted all administrative remedies and attached the requisite documentation to his petition; thus, he complied with KRS 454.415. In relevant part, KRS 454.415 states:

(1) No action shall be brought by or on behalf of an inmate . . . 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 . . . if the inmate has not exhausted administrative remedies[.]

Courts may only review issues that are raised on administrative appeal to the warden. *Houston v. Fletcher*, 193 S.W.3d 276, 278 (Ky. App. 2006).

Furthermore, an inmate must not only exhaust the administrative remedies required by the Department of Corrections, but KRS 454.415(3) mandates that an inmate attach documents to his complaint verifying that administrative remedies have been exhausted. Failure to attach the requisite documents necessitates dismissal of the petition by the circuit court. KRS 454.415(4).

In this case, Bruin attached a document showing that he had filed an administrative appeal. He asserts this was sufficient to satisfy KRS 454.415(4). In *Houston*, we rejected this identical argument. *Houston*, 193 S.W.3d at 278. In doing so, we explained the exhaustion requirement's aim is to afford the administrative agency with an opportunity to address the issues in dispute before court intervention. Specifically, we held that an inmate must adduce more than proof that he filed an administrative grievance/appeal; he must put forth proof of its substance to comply with the exhaustion requirement. *Id.*

Although Bruin did attach documents indicating the Warden heard and denied his appeal, there is no documentation setting forth the grounds of his appeal. It is impossible to determine whether the arguments in Bruin's petition for declaration of rights were identical to those raised before the Warden. The circuit court was, therefore, unable to conduct a meaningful review of Bruin's claims because it received no evidence as to the basis on which the Warden denied the appeal. In light of these facts and circumstances, the circuit court properly dismissed Bruin's petition.

For the foregoing reasons, we affirm the order of the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Brandon R. Bruin, *pro se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Angela T. Dunham
Frankfort, Kentucky