

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000921-MR

WILLIAM A. YEAGLE

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 16-CI-00814

KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: GOODWINE, JONES, AND NICKELL, JUDGES.

GOODWINE, JUDGE: William Yeagle, *pro se*, appeals the Franklin Circuit Court's order regarding his parole eligibility calculation. Yeagle contends that the Department of Corrections ("DOC"), and the trial court, erred in calculating his parole eligibility date based off his latter murder conviction.

BACKGROUND

In 2004, William Yeagle was convicted of two methamphetamine-related offenses in McLean County. He was sentenced to two concurrent, 10-year sentences. In 2007, while serving his sentence, Yeagle was convicted of murder in Daviess County, resulting in a 40-year sentence, running consecutive to his previous convictions.

Because of the murder conviction, Yeagle became classified as a violent offender.¹ Therefore, he was not eligible for parole until he served 85% of his sentence, or 20 years, whichever is less. DOC computed his parole from January 12, 2007, the date he became a violent offender, thereby making his parole eligibility date 2027.²

Yeagle disagreed with DOC's calculation of his parole and sought a declaratory judgment in Franklin Circuit Court, arguing DOC should have used his original incarceration date—2004—when calculating his parole. At first, the trial court agreed, which prompted DOC to file a motion to alter, amend, or vacate. That motion highlighted the relevant language from KRS 439.3401 and 501 KAR³

¹ Kentucky Revised Statute (KRS) 439.3401.

² Twenty years is less than 85% of 40 years, which is 34 years. Thus, add 20 years to 2007 under KRS 439.3401 to arrive at the parole eligibility year of 2027.

³ Kentucky Administrative Regulations.

1:030(3)(1)(e). Ultimately, the trial court agreed with DOC and vacated its order. Yeagle appealed. Finding no error, we affirm.

ANALYSIS

The trial court found that DOC correctly relied on 501 KAR 1:030(1)(3)(f)⁴ in calculating Yeagle’s parole eligibility. However, Yeagle contends DOC erred by using the wrong conviction date. We disagree.

501 KAR 1:030 provides the guidelines for calculating parole eligibility for violent offenders. It states in clear and unambiguous language that parole eligibility is calculated by “applying the parole eligibility criteria in effect at the time the most recent crime was committed.” 501 KAR 1:030(3)(1)(e). In Yeagle’s case, he was convicted of his original crime in 2004 and the murder conviction in 2007. At the time, the parole criteria provided,

1.a. Except as provided by clause b of this subparagraph, if a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

b. If the sentence received for the latter conviction requires the prisoner to serve a fixed percentage of the sentence or a fixed number of years prior to becoming eligible for parole, parole eligibility shall be determined by the latter conviction only.

⁴ We note that the correct reference point is in Section 3(1)(e), not Section 1, subsection 3(f).

501 KAR 1:030(3)(g)(1)(a)-(b).

Here, Yeagle is required to serve a fixed percentage or number of years—85% or twenty years—before becoming eligible for parole. Thus, his parole eligibility shall be determined from the latter conviction in 2007. The twenty-year parole eligibility shall be calculated from 2007, rather than 2004. Therefore, DOC properly calculated, and the trial court correctly upheld, the parole calculation.

Yeagle also argues 501 KAR 1:030 is unconstitutional. However, he failed to preserve this argument for appeal by not notifying the Kentucky Attorney General of the constitutional challenge. *Prickett v. Commonwealth*, 427 S.W.3d 812, 813 (Ky. App. 2013); *Jacobs v. Commonwealth*, 947 S.W.2d 416, 419 (Ky. App. 1997). Interestingly, though challenging the regulation’s constitutionality on appeal, Yeagle relied on 501 KAR 1:030 in the lower court *to support* his argument of an improper calculation. He cannot “feed one can of worms to the trial judge and another to the appellate court.” *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976), *overruled on other grounds by Wilburn v. Commonwealth*, 312 S.W.3d 321 (Ky. 2010).

Furthermore, when an argument is unpreserved, we can grant relief only if we find palpable error, meaning the alleged error affected “substantial

rights” and resulted in “manifest injustice[.]” RCr⁵ 10.26. An inmate has no right to parole. *Land v. Commonwealth*, 986 S.W.2d 440, 442 (Ky. 1999) (stating that parole is “simply a privilege and the denial of such has no constitutional implications”). Therefore, no manifest injustice can occur.

CONCLUSION

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

ALL CONCUR.

BRIEF FOR APPELLANT:

William Yeagle, *pro se*
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BRIEF FOR APPELLEE:

Angela T. Dunham
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⁵ Kentucky Rules of Criminal Procedure.