

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001738-MR

KEVIN D. QUIGGINS

APPELLANT

v. APPEAL FROM BRECKINRIDGE CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, SPECIAL JUDGE
ACTION NO. 17-CR-00112

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER¹
DISMISSING

** ** * * * **

BEFORE: GOODWINE, SPALDING, AND L. THOMPSON, JUDGES.

GOODWINE, JUDGE: Kevin D. Quiggins appeals from the October 17, 2018, order of the Breckinridge Circuit Court denying his motion to declare KRS² 439.340(11) unconstitutional as applied to him. After careful review, we dismiss.

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

² Kentucky Revised Statutes.

On August 17, 2017, Quiggins was indicted on three counts of sexual abuse in the first degree. Thereafter, Quiggins filed a motion for the circuit court to find KRS 439.340(11) unconstitutional as applied to him. KRS 439.340(11) mandates that “[n]o eligible sexual offender . . . shall be granted parole unless he or she has successfully completed the Sexual Offender Treatment Program [(“SOTP”).]” He argued that although he would be eligible for parole after serving twenty percent of his sentence, completion of the SOTP would take three to four years, preventing him from being granted parole. Quiggins attributed the length of time for completion of SOTP to “unreasonable delay” on the part of the Kentucky Department of Corrections (“DOC”). He contended these delays violated his “statutory due process rights to parole” and denied his right to equal protection under the Fourteenth Amendment of the United States Constitution and Sections 1, 2, and 3 of the Kentucky Constitution.

The circuit court held a hearing on the motion at which Dr. Dennis Wagner, a psychologist who was involved in the creation and administration of the SOTP, testified. Dr. Wagner explained the SOTP is often at maximum capacity, which could delay Quiggins’s entry into the program, and that, after entry, the program could take two years to complete. Dr. Wagner testified it was possible for Quiggins to serve the entirety of his sentence without completing the SOTP. The

circuit court denied the motion as premature because Quiggins had not yet pled guilty or been sentenced.

Quiggins subsequently pled guilty and was sentenced to serve a total of six years in prison. Conditions of his sentence included completion of the SOTP and eligibility for parole after serving twenty percent of his sentence. On the day of his sentencing, Quiggins renewed his motion for KRS 439.340(11) to be found unconstitutional as applied to him. The circuit court denied the motion, finding “any administrative delay by the [DOC] in admissions to the [SOTP] does not result in KRS 439.340(11) being unconstitutional as applied to [Quiggins].” This appeal followed.

On appeal, Quiggins argues the circuit court erred by determining KRS 439.340(11) was constitutional as applied to him. However, as argued by the Commonwealth, we are without jurisdiction to consider the merits of this argument because the DOC is an indispensable party to this action and was not named as a party by Quiggins. Because of this omission, the appeal must be dismissed.

The failure to join an indispensable party “is a jurisdictional defect that cannot be remedied.” *Nelson County Bd. of Educ. v. Forte*, 337 S.W.3d 617, 626 (Ky. 2011) (citation omitted). “An indispensable party is one whose absence prevents the Court from granting complete relief among those already parties.” *Liquor Outlet, LLC v. Alcoholic Beverage Control Bd.*, 141 S.W.3d 378, 387 (Ky.

App. 2004) (quoting *Milligan v. Schenley Distillers, Inc.*, 584 S.W.2d 751, 753 (Ky. App. 1979)). “A decision of this Court rendered in the absence of an indispensable party necessarily will be inadequate.” *Watkins v. Fannin*, 278 S.W.3d 637, 640 (Ky. App. 2009) (citation omitted). “This Court has no jurisdiction relative to persons not named as parties to the appeal.” *Id.*

With regard to the SOTP, the DOC “shall have the *sole authority and responsibility* for establishing” and operating the program. KRS 197.420 (emphasis added); KRS 197.400. Furthermore, the executive branch, of which the DOC is a part, has complete control over whether a prisoner is granted parole. *Jones v. Commonwealth*, 319 S.W.3d 295, 298 (Ky. 2010) (citation omitted). Because Quiggins’s argument relates exclusively to the operation of the SOTP and the impact of administrative delays on his eligibility for parole, the DOC’s control of the SOTP would be directly affected by the result of this appeal. *See Boyd Usher Transport v. Southern Tank Lines, Inc.*, 320 S.W.2d 120, 123-24 (Ky. 1959). Therefore, a decision cannot be reached in its absence.

Although not raised as an issue below, “jurisdiction may not be waived[] and cannot be conferred by consent of the parties.” *Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky. 2005).

Additionally, Quiggins’s claim is not ripe. “An essential element of any justiciable claim is ripeness.” *Berger Family Real Estate, LLC v. City of*

Covington, 464 S.W.3d 160, 166 (Ky. App. 2015) (citations omitted). “[T]he ripeness doctrine requires the judiciary to refrain from giving advisory opinions on hypothetical issues.” *Associated Industries of Kentucky v. Commonwealth*, 912 S.W.2d 947, 951 (Ky. 1995) (citation omitted). The Court will not “consider matters which may or may not occur in the future.” *Nordike v. Nordike*, 231 S.W.3d 733, 739 (Ky. 2007) (citations omitted).

Quiggins’s argument is premised upon two possible eventualities. First, the possibility that he will be housed in the Breckinridge County Jail for the entirety of his sentence and will be unable to complete the SOTP. Second, the possibility that the SOTP is at capacity when he enters prison and remains at capacity for the duration of his sentence. At the time of this appeal, neither of these supposed eventualities occurred, making his claim unripe for review.

Based upon the foregoing, this appeal is hereby dismissed for failure to join an indispensable party to the appeal.

ALL CONCUR.

ENTERED: _____

JUDGE, COURT OF APPEALS

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