

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NOT TO BE PUBLISHED

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

NO. 2018-CA-001804-MR

DEVONTÉ WEBB

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE PHILLIP J. SHEPHERD, JUDGE  
ACTION NO. 18-CI-00896

KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, LAMBERT, AND SPALDING, JUDGES.

LAMBERT, JUDGE: DeVonté Webb appeals from an order of the Franklin Circuit Court dismissing Webb's declaratory judgment action against the Commonwealth of Kentucky, Department of Corrections (DOC). We have reviewed the record in conjunction with applicable legal authority and affirm.

Webb was tried by a jury and found guilty of five counts of robbery in the first degree (Kentucky Revised Statute (KRS) 515.020). His sentences of

fifteen years per offense were enhanced to twenty-seven years pursuant to his conviction as a persistent felony offender in the second degree (KRS 532.080(2)). Webb's convictions were affirmed on direct appeal to the Kentucky Supreme Court in *Webb v. Commonwealth*, No. 2015-SC-000198-MR, 2017 WL 5504420 (Ky. Mar. 23, 2017). Webb later filed for post-conviction relief, which was denied by the Fayette Circuit Court on August 21, 2018. His appeal in that action is pending before this Court in *Webb v. Commonwealth*, No. 2019-CA-000058-MR.

On October 22, 2018, Webb filed the within petition for declaration of rights pursuant to KRS 418.040 in the Franklin Circuit Court. Webb sought a determination from the circuit court that the DOC cannot legally classify him as a violent offender because his judgment does not include any recitation by the trial court that the victim suffered death or serious physical injury. The DOC filed its response and motion to dismiss on November 13, 2018. The motion to dismiss was granted by the circuit court on November 16 of that year. The circuit court determined that Webb could not prevail as a matter of law because "the legislature intended the crime of First Degree Robbery to confer violent offender status on the convicted even when no death or serious physical injury was involved, and even when the court pronouncing judgment has failed to note such." Webb filed this appeal.

Webb argues that the circuit court erred in dismissing his action.

Unfortunately for Webb, the precise issue he argues was considered and rejected by this Court in *Campbell v. Ballard*, 559 S.W.3d 869 (Ky. App. 2018), wherein we held:

Some Class B felons cannot be classified as violent offenders unless the crime involved the death or serious injury to the victim, and the trial court so designates. However, where the Class B felony is robbery, the felon is automatically considered a violent offender. The violent offender statute is clear that any person who has been convicted of or pled guilty to the commission of robbery in the first degree qualifies as a violent offender. **No designation by the trial court is required.** See *Benet v. Commonwealth*, 253 S.W.3d 528, 533 (Ky. 2008); see also *Pollard v. Commonwealth*, 2017-CA-000608-MR, 2018 WL 2277170, at \*2 (Ky. App. May 18, 2018) (“Pollard became a violent offender upon pleading guilty to robbery in the first degree, and the trial court correctly found its failure to designate whether a victim suffered death or serious physical injury did not provide grounds to modify his sentence.”).

[Appellant] became a violent offender when he pled guilty to robbery in the first degree. When the crime involved is first-degree robbery, the violent offender statute applies even without a designation by the trial court regarding whether the victim suffered death or serious injury. **The relief [Appellant] sought from the circuit court, a determination that he does not qualify as a violent offender, is not authorized.** Accordingly, the circuit court properly dismissed [Appellant’s] action for failure to state a claim.

*Id.* at 871 (emphases added).

Hence, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

DeVonté Webb, *pro se*  
Beattyville, Kentucky

BRIEF FOR APPELLEE:

Brenn O. Combs  
Frankfort, Kentucky