

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001673-MR

GARY BRIDGEWATER

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER CRITTENDEN, JUDGE
ACTION NO. 00-CI-00497

COMMONWEALTH OF KENTUCKY BOARD OF CLAIMS,
AND COMMONWEALTH OF KENTUCKY DEPARTMENT
OF CORRECTIONS, BELL COUNTY FORESTRY CAMP

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, COMBS, AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant, Gary Bridgewater ("Bridgewater"), appeals a Board of Claims denial of his claim that he was negligently, willfully or arbitrarily denied "good time" by prison officials. Bridgewater asserts that in late 1999 he was eligible for 60 days of "good time" credited to his sentence. Officials at the Bell County Forestry Camp recommended that he receive 30 days "good time" credit. Bridgewater claims that this was a clerical error or mistake, and that the officials intended to, and should have, written down 60 rather than 30 days recommended credit. The record is devoid of evidence either supporting or refuting this argument. The Department of Corrections adopted the recommendation of the Bell County

Forestry Camp, and awarded Bridgewater 30 days "good time." Bridgewater states that he did not discover that he had not received credit for the full 60 days of "good time" he anticipated until the date he expected to be released.

Department of Corrections Policies and Procedures require, at Section 15.5 G, that when an inmate is not granted restoration of "good time," a written reason for the denial must be placed in the inmate's file. The form filled out to credit an inmate with restoration of "good time" also requires written reasons for any denial. No written denial was provided to Bridgewater or placed in his file. The Department of Corrections Policies and Procedures grant the Corrections Committee and institutional representatives discretion in the restoration of "good time." Bridgewater has not shown that the record contains evidence showing that the Department of Corrections was not entitled to use its discretion in evaluating his request for restoration of "good time."

The Commonwealth responded to Bridgewater's action before the Board of Claims with citation to Anderson v. Parker, Ky. App., 964 S.W.2d 809 (1997), which holds that awarding and restoring "good time" are discretionary acts. The award of "good time" is a privilege, not a right. Id. at 811. The Board of Claims dismissed the action due to lack of jurisdiction pursuant to KRS 44.070. KRS 44.073(2) only authorizes actions that allege negligence in the performance of ministerial duties. Bridgewater appealed the dismissal to the Franklin Circuit Court. The circuit court found that the Board of Claims had properly

dismissed the action. We affirm the finding of the Franklin Circuit Court, and the dismissal of the action by the Board of Claims.

Bridgewater asserts that he was entitled to relief from these acts under Section 2 of the Kentucky Constitution. He claims that the actions complained of were ministerial rather than discretionary. Bridgewater does not cite to any statute or caselaw so showing. In his complaint before the Board of Claims, Bridgewater asserted that the Bell County Forestry Camp made a mistake in calculating the days of "good time" to which Bridgewater was entitled. He argues that if Bell County had correctly calculated the days due, he would have received credit for the full 60 days.

The Board of Claims asserts that because there is no merit to Bridgewater's action, he should be sanctioned by this Court. Bridgewater responded by arguing that the jurisdictional statute does not define the word "discretionary," and he should not be sanctioned for interpreting the term in a different manner does the Board of Claims interprets the term. He also asserts that he suffered a severe deprivation and should be allowed to present his claim of error or negligence to the court.

Discretionary acts are defined as: [S]uch as necessarily require the exercise of reason in the adaptation of a means to an end and discretion in determining whether the act shall be done or the course pursued.

Franklin County v. Malone, Ky., 957 S.W.2d 195, 201 (1997).

Discretionary acts are those which involve public policy

decisions. Collins v. Commonwealth of Kentucky NREPC, Ky., 10 S.W.3d 122, 125 (1999). As the purported "error" in recommending 30 rather than 60 days "good time" credit was not altered by the Department of Corrections, this recommendation appears to have been a proper exercise of discretion rather than negligent performance of a ministerial duty on the part of the Bell County Forestry Camp. The Department of Corrections and the Bell County Forestry Camp are immune from liability for such a discretionary act.

Because the record contains nothing to expressly refute Bridgewater's assertion that this was a ministerial act rather than a discretionary act, Bridgewater cannot be sanctioned for his claims. Sanctions may only be awarded where the appeal is so lacking in merit as to have been taken in bad faith, and no good faith argument exists for the extension, modification or reversal of existing law. Raley v. Raley, Ky. App., 730 S.W.2d 531 (1987). Sanctions are not automatically to be awarded even where the court believes that the Appellant's position lacks merit or is contrary to law. Bank of the Bluegrass & Trust Co. v. Richmond Square Townhouse Condo. Council, Ky. App., 965 S.W.2d 827, 829 (1997). We deny Appellee's request that Bridgewater be sanctioned.

For the foregoing reasons, the Franklin Circuit Court is affirmed.

ALL CONCUR.

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