RENDERED: NOVEMBER 13, 2026; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1412-MR

DARIUS HARRIS — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE MARY K. MOLLOY, JUDGE
ACTION NO. 06-CR-00282

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CETRULO, AND KAREM, JUDGES.

CETRULO, JUDGE: Darius Harris ("Harris"), *pro se*, appeals the August 13, 2025 and October 2, 2025 orders of the Kenton Circuit Court denying his motion for jail time credit pursuant to KRS[1] 532.120(9). After careful review of the briefs, record, and law, we affirm.

[1] Kentucky Revised Statute.

BACKGROUND

Harris is currently an inmate serving a 40-year sentence in the custody of the Kentucky Department of Corrections ("DOC"). In November 2010, Harris was convicted of murder following his third jury trial in Kenton Circuit Court.[2] In December 2010, the trial court sentenced Harris to 40 years of imprisonment in accordance with the jury's recommendation. His conviction was affirmed on direct appeal. *Harris v. Commonwealth*, 384 S.W.3d 117 (Ky. 2012). Since then, he has twice sought postconviction relief from this Court, without success. *See Harris v. Commonwealth*, No. 2024-CA-0290-MR, 2025 WL 1271904 (Ky. App. May 2, 2025); *Harris v. Commonwealth*, No. 2015-CA-001046-MR, 2017 WL 65598 (Ky. App. Jan. 6, 2017).

On August 8, 2025, Harris filed his *pro se* KRS 532.120 motion underlying this appeal with the Kenton Circuit Court. In that motion, Harris argued that he was entitled to credit for time spent in pretrial custody at the Kenton County Detention Center from January 5, 2009 to December 13, 2010, but he did not include any attachments demonstrating exhaustion of his administrative remedies.

By order entered on August 14, 2025, the trial court denied the motion on the basis that Harris failed to provide proof that he exhausted his administrative

[2] Harris's two previous trials resulted in mistrials due to deadlocked juries.

remedies. Harris then moved *pro se* under CR[3] 59.05 to alter, amend, or vacate the court's order. In this filing, Harris conceded that he did not include attachments to support his original motion, explaining that the "documents were scanned into his KOMS[4] on his tablet" and he was unable to send them. Regardless of the reason for the initial omission, Harris included several attachments with this subsequent motion under CR 59.05.

For purposes of this appeal, we need not recount every attachment reflected in the record as having been filed with Harris's CR 59.05 motion. Instead, we address the five attachments most relevant to our analysis:[5] (1) Harris's DOC administrative review form, filed with Northpoint Training Center Offender Information Office,[6] requesting review of "Sentence Calculations: Parole Eligibility Date and Jail Credit"; (2) a response dated May 21, 2025, from the Institutional Offender Information Services; (3) a letter dated June 9, 2025, from DOC's Offender Information Services in Frankfort, Kentucky ("Central Office"); (4) an undated letter from Harris to the Office of Probation and Parole for Kenton

[3] Kentucky Rule of Civil Procedure.

[4] Kentucky Offender Management System.

[5] These documents are also included in the appendix to Harris's brief for appellant.

[6] At the time Harris began pursuing his administrative remedies, he was incarcerated at Northpoint Training Center in Burgin, Kentucky.

County; and (5) an undated letter from the assistant district supervisor from that Probation and Parole office in response.

On October 2, 2025, the trial court entered an order denying Harris's CR 59.05 motion. Quoting the June 9 letter from the Central Office, the court noted that Harris was advised as follows: "If you feel your jail credit is not correct, you will need to contact Probation and Parole directly out of the county the charges were received in to have the issue investigated and changes made if necessary." The court further held that Harris "has apparently not contacted Probation and Parole as advised by [DOC]. As such, he still has not exhausted his administrative remedies." This appeal followed.

Harris contends that the trial court erred by denying his motion for additional jail credit based on an alleged failure to exhaust his administrative remedies and directs us to another portion of the June 9 letter that states: "As of the date on this letter all available administrative remedies pertaining to this specific topic have been exhausted." The Commonwealth asks us to affirm the trial court,[7] arguing the sentence Harris cites must be read in the entire context of the letter. When considered as a whole, the Commonwealth contends that the

[7] The Commonwealth also requests this Court to dismiss Harris's appeal on the ground that the notice of appeal was untimely filed. Another panel of this Court previously issued a show-cause order, to which Harris responded. By order entered on January 8, 2026, this Court determined that Harris had demonstrated sufficient cause to avoid dismissal of the appeal, and we decline to revisit that determination.

June 9 letter explained *how* Harris could exhaust his administrative remedies and advised him to first contact the Probation and Parole Office in the county where he was convicted, which the Commonwealth mistakenly argues Harris did not do.[8] Nevertheless, for reasons that differ somewhat from those relied upon by the trial court, we agree that Harris failed to exhaust his administrative remedies and affirm the trial court's decision.

ANALYSIS

As indicated, the sole issue in this appeal is whether Harris exhausted his administrative remedies. KRS 532.120(3) provides that:

> Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the Department of Corrections toward service of the maximum term of imprisonment in cases involving a felony sentence and by the sentencing court in all other cases. If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence shall be considered for all purposes as time served in prison.

KRS 532.120(9) provides that: "An inmate may challenge a failure of the Department of Corrections to award a sentencing credit under this section or

[8] In its brief, the Commonwealth states "[t]here is no evidence that Probation and Parole ever received, considered, or denied Harris's request for jail-time credit recalculation." Appellee's brief at 8-9. To the contrary, the record contains what appears to be a response letter from Probation and Parole confirming receipt of Harris's letter requesting a review of his custody time credit. Record on Appeal (ROA), p. 487.

the amount of credit awarded by motion made in the sentencing court no later than thirty (30) days after the inmate has exhausted his or her administrative remedies." That is, an inmate must exhaust the administrative remedies provided by the policies and procedures of DOC before bringing an action challenging custody credit in the sentencing court. *See* KRS 454.415(1) (prohibiting an inmate from bringing an action to challenge, among other things, custody credit "until administrative remedies as set forth in the policies and procedures of [DOC] . . . are exhausted"). Furthermore, KRS 454.415(3) requires an inmate to "attach to any complaint filed documents verifying that administrative remedies have been exhausted." Failure to comply with the requirement to exhaust administrative remedies results in the dismissal of the action. KRS 454.415(4) ("A court shall dismiss a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section if the inmate has not exhausted administrative remedies[.]").

"Duly promulgated administrative regulations have the 'force and effect of law.'" *Woods v. Commonwealth*, 599 S.W.3d 894, 897 (Ky. App. 2020) (quoting *Linkous v. Darch*, 323 S.W.2d 850, 852 (Ky. 1959)). "And 501 Kentucky Administrative Regulations (KAR) 6:020 § 1 incorporates by reference [DOC] Policies and Procedures (CPP) 17.4, which governs sentence calculations." *Id.* CPP 17.4(A) outlines the process for an inmate to follow when requesting "a

review or explanation of the *method of sentence calculation* for the sentences on which he is presently committed[.]" CPP 17.4(A)(1) (Emphasis added.) For an inmate housed in a DOC institution, the request is submitted to that institution's office for Offender Information Services. CPP 17.4(A)(2). An inmate may then appeal that response in writing to the Central Office (*i.e.*, Offender Information Services in Frankfort, Kentucky). CPP 17.4(C)(1).

From the record, it appears that Harris attempted to follow this procedure to challenge the calculation of his jail-time credit and seek a correction that would entitle him to additional credit toward his sentence. This misguided attempt to exhaust his administrative remedies explains Harris's false impression that he had done so. To briefly recap the progression of events evidenced by the record, in May 2025, Harris submitted the CPP 17.4 form to request administrative review of his parole eligibility date and jail credit at his current institution, Northpoint Training Center. An official with Northpoint Training Center's Offender Information Services responded on May 21, 2025, with a calculation of the time Harris had served, along with an explanation of that calculation accounting for the award of jail-time credit. Harris then appealed that response to the Central Office, resulting in the June 9 letter. That letter provided, in relevant part, the following:

> The break down [*sic*] from the previous letter response pertaining to your time served is correct with all

> information we have been provided in our office. . . . *Be aware that our office does not have the authority or ability to calculate or enter jail credit as they are the responsibility of Probation and Parole*. If you feel your jail credit is not correct, you will need to contact Probation and Parole directly out of the county the charges were received in to have the issue investigated and changes made if necessary.
>
> As of the date on this letter all available administrative remedies *pertaining to this specific topic* have been exhausted.

(Emphasis added.) In other words, this review concerned the calculation of the amount of time Harris had served toward his sentence; not whether he was entitled to additional jail custody credit prior to his final sentencing by the trial court. The "Administrative Remedy for Jail Custody Time Credit" is governed by CPP 17.4(D).

CPP 17.4(D)(1)(a) permits an inmate to request "a review of the calculation of jail custody time credit applied to his sentence[.]" This request must be sent to "the Probation and Parole Office in the county in which the inmate was sentenced." CPP 17.4(D)(1)(b). Upon receiving the inmate's request, CPP 17.4(D)(2) sets forth the procedure that Probation and Parole must follow in preparing a response:

> a. The District Supervisor, or designee, shall review the request and prepare a written response. Upon receipt of the written request from the inmate, the District Supervisor, or designee, shall review the offender's record prior to giving a response.

> (1) The response shall include an explanation of the method of calculation of jail custody time credit, and
>
> (2) Whether or not the correct jail custody time credit has been applied to the sentence.

CPP 17.4(D)(2)(a)(1)-(2).

To exhaust the administrative remedies in this regard, an inmate must comply with provisions of CPP 17.4(D)(3) governing appeals.

> a. An inmate may appeal the written response concerning custody time credit to the Offender Information Services Branch, Attention: Custody Time Credit Appeal, PO Box 2400, Frankfort, KY 40602-2400.
>
> b. The appeal response shall include:
>
> (1) An explanation of the method of calculation and application, and
>
> (2) Any statutes applied in the calculation.
>
> c. The response on this appeal shall be issued within thirty (30) working days of the receipt of the offender's request for review.

CPP 17.4(D)(3). Although the letters between Harris and the Probation and Parole Office for Kenton County are undated, Harris's argument in his appellate brief suggests that he contacted Probation and Parole after receiving the June 9 letter from Central Office. Appellant's brief at 3-4. Regardless of when he contacted Probation and Parole, it does not appear that Harris appealed the response from Probation and Parole to the Central Office as required by CPP 17.4(D)(3). *See*

Woods, 599 S.W.3d at 898 ("Even if we, solely for the sake of argument, were to accept that Woods contacted that local office, he has not shown that he then properly appealed to [DOC] Offender Information Services Branch before timely seeking relief in circuit court.").

"[E]xhaustion of administrative remedies is required prior to resort to the courts." *Kentucky State Police v. Scott*, 529 S.W.3d 711, 716 (Ky. 2017) (citation omitted). As noted by this Court in *Woods*, "we may affirm the trial court's decision 'for any reason sustainable under the record.'" 599 S.W.3d at 897 (quoting *Lynn v. Commonwealth*, 257 S.W.3d 596, 599 (Ky. App. 2008)). Accordingly, although the record indicates that Harris contacted Probation and Parole at some point, he failed to prove that he exhausted his administrative remedies by pursuing an administrative appeal as required by CPP 17.4(D)(3). "The penalty for failing to comply with administrative remedies is dismissal of the action." *Id.* (citing KRS 454.415(4)). "Thus, his motion should have been dismissed, which is a result functionally akin to the trial court's summary denial of [Harris]'s motion." *Id.* Accordingly, we express no opinion on whether Harris is entitled to additional credit.

CONCLUSION

For the foregoing reasons, we AFFIRM the order of the Kenton Circuit Court denying Harris's motions for failure to exhaust his administrative remedies.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Darius Harris, *pro se*
Burgin, Kentucky

BRIEF FOR APPELLEE:

Russell Coleman
Attorney General of Kentucky

Ken W. Riggs
Assistant Attorney General
Frankfort, Kentucky