

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001637-MR

TERRY MILLS

APPELLANT

v.

APPEAL FROM LYON CIRCUIT COURT
HONORABLE C.A. WOODALL, II, JUDGE
ACTION NO. 2010-CI-00013

DEPARTMENT OF CORRECTIONS,
OFFENDER INFORMATION
SERVICES

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: DIXON, LAMBERT, AND VANMETER, JUDGES.

LAMBERT, JUDGE: Terry Mills, proceeding *pro se*, appeals from a Lyon Circuit

Court order dismissing his petition for declaration of rights.¹ Mills claims that the

¹ Mills filed a writ of mandamus in the Lyon Circuit Court rather than a petition for a declaration of rights. A writ of mandamus, however, is “an extraordinary remedy which compels the performance of a ministerial act or mandatory duty where there is a clear legal right or no adequate remedy at law.” *County of Harlan v. Appalachian Reg’l Healthcare, Inc.*, 85 S.W.3d 607, 613 (Ky. 2002). The writ may only be granted in two circumstances: “(1) when the lower court is acting beyond its jurisdiction; and (2) when the lower court is acting or is about to act erroneously, and there is exists no adequate remedy by appeal or otherwise and great injustice

Department of Corrections erroneously classified him as violent offender, which resulted in an increased period of time that he must serve in prison before becoming eligible for parole. Following a careful review of the record and applicable case law, we affirm the Lyon Circuit Court.

On July 31, 2002, Mills pleaded guilty to the following charges: (1) manufacturing methamphetamine while in possession of a firearm, (2) possession of drug paraphernalia while in possession of a firearm, (3) first-degree possession of a controlled substance while in possession of a firearm, (4) possession of a handgun by a convicted felon, (5) theft by unlawful taking under \$300, (6) possession of marijuana while in possession of a firearm, and (7) being a first-degree persistent felony offender. Pursuant to the guilty plea, the sentences for counts 1-6 ran concurrently for a total of twenty-years' imprisonment enhanced by twenty-years' imprisonment on the charge of being a first-degree persistent felony offender.

Manufacturing methamphetamine is a Class B felony. Kentucky Revised Statutes (KRS) 218A.1432(2). Mills pleaded guilty to manufacturing methamphetamine while in possession of a firearm, which enhanced the conviction to a Class A felony. See KRS 218A.992 (1)(a). Based upon Mills' conviction of a Class A felony, the Department of Corrections classified Mills as a violent offender. KRS 439.3401(3) provides that,

and irreparable injury will result if petition is not granted.” *Sowers v. Lewis*, 241 S.W.3d 319, 321-22 (Ky. 2007). Given that Mills' claims fall outside of the scope of a writ of mandamus, the circuit court treated Mills' *pro se* filing as a petition for declaration of rights. Mills did not object. Therefore, we review his appeal as a denial of a petition for declaration of rights.

[a] violent offender who has been convicted of a capital offense or a Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.

Mills argues that he was improperly classified as a violent offender given that the facts underlying his conviction do not contain violence. We disagree.

KRS 439.3401(1) defines “violent offender” as: “[a]ny person who has been convicted of or pled guilty to the commission of: (a) [a] capital offense; (b) [a] Class A felony; (c) [a] Class B felony involving the death of the victim or serious physical injury to the victim”, among other crimes. While examining KRS 439.3401, we must,

ascertain the intention of the legislature from the words used in enacting statutes rather than surmising what may have been intended but was not expressed. In other words, we assume that the [Legislature] meant exactly what it said, and said exactly what it meant. Only when [it] would produce an injustice or ridiculous result should we ignore the plain meaning of a statute.

Revenue Cabinet v. O’Daniel, 153 S.W.3d 815, 819 (Ky. 2005) (internal footnotes and quotations omitted). While KRS 439.3401(c) requires that Class B felonies result in death or serious injury to be deemed violent offenses, the statute does not specifically require Class A felonies to result in death or serious physical injury or involve violence. Therefore, it follows that all persons convicted of Class A felonies are classified as violent offenders.

Although we must examine the plain meaning of the law, it is also appropriate to consider “the contemporaneous facts and circumstances which shed intelligible light on the intention of the legislative body.” *Mitchell v. Kentucky Farm Bureau, Ins. Co.*, 927 S.W.2d 343, 346 (Ky. 1996) (*overruled on other grounds by Nantz v. Lexington Lincoln Mercury Subaru*, 947 S.W.2d 36 (Ky. 1997)). We recognize that manufacturing methamphetamine while in possession of a firearm was not a Class A felony in 1991 when KRS 439.3401 was enacted.² The Legislature may not have contemplated the existence of a non-violent, Class A felony. Nonetheless, KRS 439.3401 has been amended numerous times since KRS 218A.1432 was enacted. None of the amendments excluded manufacturing methamphetamine while in possession of a firearm as a violent offense. Without specifically excluding this crime from other Class A felonies, KRS 439.3401 requires those convicted of manufacturing methamphetamine while in possession of a firearm be classified as violent offenders, with all the ramifications that result from that designation.

Based on the foregoing, we affirm the Lyon Circuit Court order.

ALL CONCUR.

² Manufacturing methamphetamine was not criminalized until 1998. KRS 218A.1432.

BRIEFS FOR APPELLANT:

Terry Mills, *Pro Se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General

Allison R. Brown
Assistant Attorney General
Frankfort, Kentucky