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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001395-MR

NATHAN COLE MEACHAM

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 15-CI-00209

DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, DIXON, AND JONES, JUDGES.

DIXON, JUDGE: Nathan Cole Meacham appeals from an order entered by the Franklin Circuit Court that dismissed his petition for declaration of rights. We affirm.

In August 2014, Meacham, an inmate at the Kentucky State Reformatory, sought an administrative review of his sentence calculation.

Meacham cited the 2010 amendment to KRS 197.045(1), asserting he was entitled to educational good time credit for completing three treatment programs¹ between 1999 and 2002. The Department of Corrections (DOC) denied his request for credit because the 2010 amendment did not apply retroactively. Meacham then filed a petition for declaration of rights in Franklin Circuit Court. In response, the DOC moved to dismiss the petition pursuant to CR 12.02(f). In its written order dismissing Meacham's petition, the circuit relied on an unpublished decision of this Court, *Everman v. Thompson*, 2013-CA-000972-MR, 2014 WL 1156246 (Mar. 21, 2014) (disc. rev. denied Oct. 15, 2014), which held the 2010 amendment did not retroactively apply to inmates who completed treatment programs prior to the effective date of the amendment. This appeal followed.

A dismissal for failure to state a claim presents only questions of law; accordingly, our review is de novo. *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009).

Meacham concedes *Everman* is factually on point; however, he contends it should not be considered persuasive authority because the holding is incorrect. Essentially, Meacham believes, because the statutory language does not explicitly prohibit retroactive application, the legislature intended to award credit to prisoners who completed programs prior to 2010. In support of his argument, he

¹ Meacham alleged he completed the Sex Offender Treatment Program (SOTP), Moral Reconciliation Therapy (MRT), and Pathfinders.

points out “the General Assembly need not use magic words - instead, all that is required is that the enactment make it apparent that retroactivity was the intended result.” *Commonwealth ex rel. Conway v. Thompson*, 300 S.W.3d 152, 167 (Ky. 2009).

Meacham’s argument is unpersuasive. There is simply no indication, express or implied, the legislature intended the treatment credit provision to apply retroactively.² It is well-settled, “Kentucky law prohibits the amended version of a statute from being applied retroactively to events which occurred prior to the effective date of the amendment unless the amendment expressly provides for retroactive application.” *Commonwealth Dep't. of Agriculture v. Vinson*, 30 S.W.3d 162, 168 (Ky. 2000). We conclude the 2010 statutory amendment was not retroactive; consequently, Meacham was not entitled to a sentence credit for programs completed before the effective date of the amendment.

Finally, Meacham contends his right to equal protection was violated when the DOC awarded credit to other prisoners who completed the treatment programs after the effective date of the amendment.

² The 2010 amendment to KRS 197.045(1) included the following language: “[T]he department shall provide an educational good time credit of ninety (90) days to any prisoner . . . who completes a drug treatment program or other program as defined by the department that requires participation in the program for a minimum of six (6) months[.]” 2010 Ky. Acts Ch. 107 § 3 (HB 564) (eff. July 15, 2010).

Meacham’s conclusory allegation is without merit. A prisoner cannot establish “a violation of his equal protection rights simply by showing that other inmates were treated differently. He would have to show that he was victimized because of some suspect classification, which is an essential element of an equal protection claim.” *Newell v. Brown*, 981 F.2d 880, 887 (6th Cir. 1992). After careful review, we conclude the circuit court properly dismissed Meacham’s petition because he was not entitled to relief as a matter of law.

For the reasons stated herein, we affirm the Franklin Circuit Court.

ALL CONCUR.

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