

APPENDIX

- Franklin Circuit Court's Opinion and Order Entered June 15, 2018.
- Kentucky Court of Appeals' Affirming Opinion Rendered February 15, 2019.
- Kentucky Court of Appeals' Order Denying Rehearing Entered May 15, 2019.
- Kentucky supreme Court's Order denying Discretionary Review Entered October 24, 2019.

COMMONWEALTH OF KENTUCKY
 FRANKLIN CIRCUIT COURT
 DIVISION II

CIVIL ACTION No. 17-CI-01227

ENTERED

JUN 15 2018

FRANKLIN CIRCUIT COURT
 AMY FELDMAN, CLERK

CHRISTOPHER PEYTON

PETITIONER

vs.

RAVONNE SIMS, et al.

RESPONDENTS

OPINION AND ORDER

This matter is before the Court upon Respondents' *Motion to Dismiss*. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby **GRANTS** the Respondents' *Motion*.

STATEMENT OF FACTS

On May 11, 2016, Petitioner was convicted of murder and tampering with physical evidence. He is currently serving a sentence for these crimes at the Roederer Correctional Complex. Petitioner's mother, Kimberly Peyton, also served a sentence in connection with Petitioner's crimes for facilitation of murder and tampering with physical evidence. Upon Kimberly Peyton's release on parole, Petitioner sought to add her to his visitation list. This request was subsequently denied by Respondents due to Kentucky Corrections Policy and Procedure ("CPP") 16.1(E)(6), which states, "[a] visitor may be excluded from the institution if...the visitor is directly related to the inmate's criminal behavior."

Following Respondents' denial of the visitation request, Petitioner filed a *Declaration of Rights* with the Court. After vacating the January 26, 2018 *Order* granting the dismissal of

Petitioner's case, Respondents were directed to properly serve Petitioner. Having been properly served on March 22, 2018, Petitioner now seeks further relief from the Court.

STANDARD OF REVIEW

When considering a motion to dismiss, Civil Rule 12.02 requires the Court to construe the pleadings liberally "in a light most favorable to the plaintiff" and to take all factual allegations in the complaint to be true. *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. Ct. App. 1987) (citing *Ewell v. Central City*, 340 S.W.2d 479 (Ky. 1960)). "The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Mims v. W.-S. Agency, Inc.*, 226 S.W.3d 833, 835 (Ky. Ct. App. 2007) (quoting *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. Ct. App. 2002)). In *D.F.Bailey, Inc. v. GRW Engineers Inc.*, the Kentucky Court of Appeals discussed a trial court's standard of review when ruling on a motion to dismiss. 350 S.W.3d 818 (Ky. Ct. App. 2011). "[T]he question is purely a matter of law. [...] Further, it is true that in reviewing a motion to dismiss, the trial court is not required to make any factual findings, and it may properly consider matters outside of the pleadings in making its decision." *Id.* at 820 (internal citations omitted).

ANALYSIS

Petitioner challenges Respondents' denial of the visitation request as a violation of his constitutional rights. First, Petitioner contends that he has a liberty interest in being able to visit with his mother and reasons that application of CPP 16.1(E)(6) is an atypical, significant deprivation of that liberty. In the alternative, Petitioner argues that even if no liberty interest exists, he was entitled to certain rights of Due Process that Respondents' failed to adhere to. For the following reasons, the Court disagrees.

Petitioner's first argument conflicts with well-established case law concerning liberty interests. While state laws and regulations may create enforceable liberty interests, whether a protected interest actually exists depends on the language used and the nature of the condition. That is, a liberty interest is created when "the regulations contain explicitly mandatory language, i.e., specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow. *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 463 (1983). In addition to the language used, a liberty interest is also created when there is an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Marksberry v. Chandler*, 126 S.W.3d 747, 750 (Ky. Ct. App. 2003) (citing *Sandin v. Conner*, 515 U.S. 472, 484-486 (1995)).

Here, no mandatory language or specific directives have been used to deny Petitioner's visitation request. Instead, CPP 16.1 says that "a visitor *may* be excluded," giving prison officials discretion in making visitation determinations. (emphasis added). Additionally, Petitioner's claim does not rise to the level of an "atypical, significant deprivation." The type of deprivations contemplated by *Sandin*'s "atypical" standard must present a "dramatic departure from the basic contours of the conditions of the inmate's sentence." See *Wilkinson v. Austin*, 545 U.S. 209, 223 (2005) (citing *Sandin*, 515 U.S. at 485). Thus, Respondents' decision to prohibit any person—even his mother—charged with crimes directly related to Petitioner's criminal behavior fails to create a protected interest.

Petitioner's contention that he was entitled to due process in the absence of any protected interests also overlooks the fact that the very right to procedural due process is based on deprivations of such interests. It has long been held that "the requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's

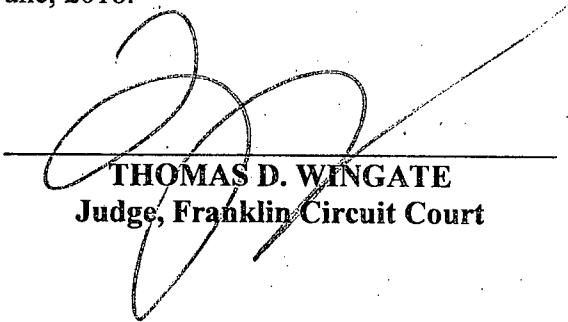
protection of liberty and property.” *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). Further, the U.S. Supreme Court has held that “the denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence, and therefore is not independently protected by the Due Process Clause.” *Thompson*, 490 U.S. at 461 (internal citations omitted). Therefore, absent any protected interest, Petitioner’s second argument is moot.

CONCLUSION

The Court finds that no legal relief exists for Petitioner’s claims. For the foregoing reasons, the Court hereby **DENIES** Petitioner’s *Motion for Leave to File a Supplemental Pleading* and Petitioner’s *Motion for Production of Discovery*, and the Court hereby **GRANTS** Respondents’ *Motion to Dismiss*.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 13 day of June, 2018.



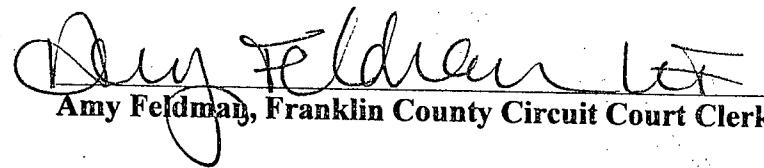
THOMAS D. WINGATE
Judge, Franklin Circuit Court

CERTIFICATE OF SERVICE

15 I hereby certify that a true and correct copy of the foregoing Order was mailed, this day of June, 2018, to the following:

Christopher Peyton #283628
Roederer Correctional Complex
P.O. Box 69
LaGrange, Kentucky 40031

Hon. Kristen Wehking
Justice and Public Safety Cabinet
125 Holmes Street
Frankfort, Kentucky 40601


Amy Feldman, Franklin County Circuit Court Clerk

RENDERED: FEBRUARY 15, 2019; 10:00 A.M.
 TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001062-MR

CHRISTOPHER PEYTON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 17-CI-01227

RAVONNE SIMS, WARDEN; AND
JAMES ERWIN, COMMISSIONER OF
THE KENTUCKY DEPARTMENT
OF CORRECTIONS

APPELLEES

OPINION
AFFIRMING

*** * * * *

BEFORE: COMBS, DIXON, AND GOODWINE, JUDGES.

COMBS, JUDGE: Inmate Christopher Peyton, *pro se*, appeals an order of the Franklin Circuit Court dismissing his petition for a declaration of rights. After our review, we affirm.

Peyton is an inmate incarcerated in the Roederer Correctional Complex where he is serving a sentence for murder and tampering with physical evidence. Peyton committed murder while his mother waited in the car, and his mother pled guilty to facilitation to murder and tampering with physical evidence for her role in her son's criminal activity.

Peyton sought to add his mother to his prison visitation list, but his request was initially denied by a classification and treatment officer because his mother was an active parolee. Peyton's mother wrote a letter to the Warden, Ravonne Sims, to ask permission to visit her son. Warden Sims denied her request because prisons may prohibit inmates from visiting with persons who had been involved in their criminal behavior.

Peyton asked Warden Sims to reconsider his request, but she refused. Peyton then filed a grievance, and the grievance committee concurred with Warden Sims's decision. Peyton appealed the grievance committee's decision to Warden Sims, and she reiterated that her decision to exclude Peyton's mother from his visitation list was made because they "acted in unison to commit a crime in which there was a deliberate taking of a life."

Peyton then filed a petition for declaration of rights in the Franklin Circuit Court, arguing that his right to due process was violated when he was denied visitation with his mother. Warden Sims and Commissioner James Erwin

responded by filing a motion to dismiss, arguing that Peyton failed to state a claim upon which relief may be granted. The circuit court granted the motion to dismiss on the ground that Peyton did not have a liberty interest in being able to visit with his mother and that no due process right was violated. This appeal followed.

“A motion to dismiss for failure to state a claim upon which relief may be granted ‘admits as true the material facts of the complaint.’” *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010) (quoting *Upchurch v. Clinton Cty.*, 330 S.W.2d 428, 429-30 (Ky. 1959)). Accordingly, “a court should not grant such a motion ‘unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved[.]’” *Id.* (quoting *Pari-Mutuel Clerks’ Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977)). “Since a motion to dismiss for failure to state a claim upon which relief may be granted is a pure question of law . . . an appellate court reviews the issue *de novo.*” *Id.* (citation omitted).

Peyton makes two arguments on appeal: (1) the circuit court erred because he has a protected liberty interest in visitation with his mother and that denial of such visitation is an atypical, significant deprivation of his liberty interest; and (2) the circuit court erred in allowing the Department of Corrections absolute discretion to deny visitors based solely upon their involvement in an inmate’s criminal behavior.

CPP¹ 16.1 grants broad discretion to wardens to determine whether certain persons should be excluded from visiting inmates. Peyton's visitation request was denied pursuant to CPP 16.1(2)(E)(6), which provides that "[a] visitor may be excluded from the institution if: [t]he visitor is directly related to the inmate's criminal behavior." The Fourteenth Amendment provides in pertinent part: "nor shall any State deprive any person of life, liberty, or property without due process of law[.]" It is true that "denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence, and is therefore not independently protected by the Due Process Clause."

States can "create enforceable liberty interests in the prison setting."

Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 461, 109 S. Ct. 1904, 15 Ed. 2d 506 (1989) (internal quotation marks and citation omitted).

In determining whether an inmate has a protected liberty interest created by state law, we apply a two-part analysis. First, *Thompson* requires a determination that a prison regulation must contain "explicitly mandatory language" that demands a particular outcome. *Id.* at 462-63, 109 S. Ct. at 1910. In a later opinion, the Supreme Court pointed out that *Thompson* and other case law "shift[ed] the focus of the liberty interest inquiry to one based on the language of a particular regulation, and not the nature of the deprivation." *Sandin v. Conner*, 515

¹ Kentucky Department of Corrections Policies and Procedures.

U.S. 472, 481, 115 S. Ct. 2293, 2299, 132 L. Ed. 2d 418 (1995). The Court determined that analysis of mandatory language alone is inadequate because “the search for a negative implication from mandatory language in prisoner regulations has strayed from the real concerns undergirding the liberty protected by the Due Process Clause.” *Id.* at 483, 115 S. Ct. at 2300. In addition to examining whether a prison regulation contains mandatory language that restricts the discretion of prison officials, we also must determine whether a regulation “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 484, 115 S. Ct. at 2300.

Peyton argues that his right to due process was violated when he was denied visitation with his mother. CPP 16.1 gives prison administrators authority to determine whether persons are excluded from visiting the institution; it provides that prison administrators *may* exclude certain visitors. The applicable policy lacks mandatory language requiring the prison to allow Peyton’s mother to visit. Thus, a protected liberty interest has not been created under state law.

Furthermore, Peyton has not experienced a significant hardship because “[t]he denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence, and therefore is not independently protected by the Due Process Clause.” *Thompson*, 490 U.S. at 461, 109 S. Ct. at 1909 (internal quotation marks and citation omitted).

We conclude that Peyton does not have a protected liberty interest in visitation with his mother and that the circuit court correctly found that the Department of Corrections has the absolute discretion to deny visitation based on a visitor's involvement in an inmate's criminal behavior.

We affirm the order of the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher Peyton, *pro se*
LaGrange, Kentucky

BRIEF FOR APPELLEES:

Kristin Wehking
Frankfort, Kentucky

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001062-MR

CHRISTOPHER PEYTON

APPELLANT

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APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
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RAVONNE SIMS, WARDEN; AND JAMES
ERWIN, COMMISSIONER OF THE KENTUCKY
DEPARTMENT OF CORRECTIONS

APPELLEES

ORDER
DENYING PETITION FOR REHEARING

BEFORE: COMBS, DIXON, AND GOODWINE, JUDGES

Having considered the Petition for Rehearing and the Response thereto, and being sufficiently advised, the COURT ORDERS that the petition be, and it is hereby, DENIED.

ENTERED: MAY 15 2019

Pamela R. Goodwine
JUDGE, COURT OF APPEALS

Supreme Court of Kentucky

2019-SC-000290-D
(2018-CA-001062)

CHRISTOPHER PEYTON

MOVANT

v.

FRANKLIN CIRCUIT COURT
2017-CI-01227

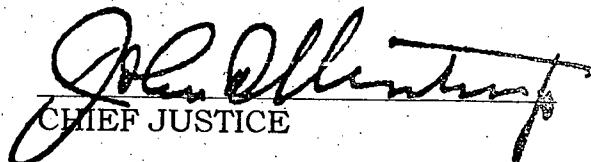
RAVONNE SIMS, WARDEN, ET AL.

RESPONDENTS

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

ENTERED: October 24, 2019.


John G. Roberts, Jr.
CHIEF JUSTICE