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LEXIS 324**

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Court of Appeals of Kentucky

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NO. 2020-CA-1158-MR

Reporter

2021 Ky. App. Unpub. LEXIS 324 * | 2021 WL 2021832

ISAIAH TYLER, APPELLANT v. DEPARTMENT OF CORRECTIONS, APPELLEE

Notice: THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED

DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

Subsequent History: Review denied by Tyler v. Dep't of Corr., 2022 Ky. LEXIS 263 (Ky., Aug. 10, 2022)

Prior History: [*1] APPEAL FROM FRANKLIN CIRCUIT COURT. HONORABLE PHILLIP J. SHEPHERD, JUDGE. ACTION NO. 19-CI-01267.
Tyler v. Commonwealth, 2016 Ky. Unpub. LEXIS 42 (Ky., June 16, 2016)

Core Terms

violent offender, robbery, circuit court, trial court, first-degree, complicity, designates, convicted, sentence, felony, first degree, classified, argues, serious physical injury, plea guilty, failure to state a claim, parole eligibility, motion to dismiss, properly dismiss, separate offence, commit robbery, serious injury, matter of law, guilty plea, automatically, provisions, correctly, qualifies, purposes, parole

Counsel: **Isaiah Tyler**, APPELLANT, Pro se, Eddyville, Kentucky.

BRIEF FOR APPELLEE: Allison R. Brown, Frankfort, Kentucky.

Judges: BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND MAZE, JUDGES. ALL CONCUR.

Opinion by: MAZE

Opinion

AFFIRMING

MAZE, JUDGE: **Isaiah Tyler** appeals from an order of the Franklin Circuit Court dismissing his declaratory judgment action against the Kentucky Department of Corrections (the Department). He argues that the Department improperly classified him as a violent offender for purposes of determining his parole eligibility. We conclude that Tyler was subject to the terms of the violent offender statute as a matter of law. Hence, we affirm.

The relevant facts of this matter are not in dispute. Following a jury trial in the Henderson Circuit Court, Tyler was convicted of complicity to first-degree robbery and of being a second-degree persistent felony offender (PFO II). The jury fixed his sentence at a total of forty years' imprisonment, which the trial court imposed. The Kentucky Supreme Court affirmed his conviction on direct appeal. Tyler v.

being guilty of the principal offense.'" *Commonwealth v. Combs*, 316 S.W.3d 877, 881 (Ky. 2010) (quoting *Wilson v. Commonwealth*, 601 S.W.2d 280, 286 (Ky. 1980)). **[*4]** Thus, complicity is not a separate offense but is an alternative theory of the charged offense. *Futrell v. Commonwealth*, 471 S.W.3d 258, 277 (Ky. 2015). As a result, Tyler's conviction for first-degree robbery is clearly subject to the provisions of the violent offender statute.

Tyler also argues that the violent offender statute should not apply because the trial court did not specifically find that his conduct resulted in the death of the victim or serious physical injury to the victim. However, this Court recently rejected that argument in *Campbell v. Ballard*, 559 S.W.3d 869 (Ky. App. 2018). Like Tyler, the appellant in *Ballard* challenged his classification as a violent offender following a plea of guilty to first-degree robbery. Similarly, the appellant in *Ballard* also argued that Class B felonies are only classified as violent offenses when a court's judgment designates that a victim has suffered death or serious physical injury. This Court disagreed, holding as follows:

Some Class B felons cannot be classified as violent offenders unless the crime involved the death or serious injury to the victim, and the trial court so designates. However, where the Class B felony is robbery, the felon is automatically considered a violent offender. The violent offender statute is clear that any **[*5]** person who has been convicted of or pled guilty to the commission of robbery in the first degree qualifies as a violent offender. No designation by the trial court is required. *See Benet v. Commonwealth*, 253 S.W.3d 528, 533 (Ky. 2008); *see also Pollard v. Commonwealth*, 2017-CA-000608-MR, 2018 Ky. App. Unpub. LEXIS 311, 2018 WL 2277170, at *2 (Ky. App. May 18, 2018) ("Pollard became a violent offender upon pleading guilty to robbery in the first degree, and the trial court correctly found its failure to designate whether a victim suffered death or serious physical injury did not provide grounds to modify his sentence.").

Campbell became a violent offender when he pled guilty to robbery in the first degree. When the crime involved is first-degree robbery, the violent offender statute applies even without a designation by the trial court regarding whether the victim suffered death or serious injury. The relief *Campbell* sought from the circuit court, a determination that he does not qualify as a violent offender, is not authorized. Accordingly, the circuit court properly dismissed *Campbell*'s action for failure to state a claim.

Id. at 871.

For the same reasons, since Tyler was convicted of complicity to first-degree robbery, he was automatically considered a violent offender for purposes of KRS 439.3401. *See also Lee v. Kentucky Dep't of Corr.*, 610 S.W.3d 254, 263 (Ky.

2020). Thus, the trial court was not obligated to make additional findings. [*6]

Therefore, the Department correctly designated Tyler as a violent offender following his conviction for complicity to first-degree robbery. Consequently, we conclude that the circuit court properly dismissed Tyler's complaint.

Accordingly, we affirm the order of the Franklin Circuit Court dismissing Tyler's complaint.

ALL CONCUR.

Footnotes

1

Kentucky Rules of Criminal Procedure.

2

Kentucky Rules of Civil Procedure.

3

Kentucky Revised Statutes.

4

KRS 439.3401 has been amended several times since Tyler's conviction in 2014. The current version of the statute, which was in effect at the time Tyler filed this action, was enacted by 2019 Ky. Laws ch. 136, § 1 (eff. Jun. 27, 2019).



**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 19-CI-1267**

ISAIAH TYLER**PETITIONER**

v.

ORDER DISMISSING**DEPARTMENT OF CORRECTIONS****RESPONDENT**

This matter is before the Court upon Respondent Department of Corrections' Motion to Dismiss. Petitioner is an inmate currently housed at the Kentucky State Penitentiary serving a forty (40) year sentence for a conviction of Complicity to Robbery First Degree. Petitioner's sentence was imposed by the Henderson Circuit Court. *See* 14-CR-00034-002. Pursuant to KRS 439.3401, Respondent Department of Corrections "DOC" classified Petitioner as a violent offender. As a result of this designation, Petitioner is required to serve 85% of his sentence prior to parole eligibility.

BACKGROUND

Petitioner challenges Respondent's classification on the grounds that KRS 439.3401 does not permit a violent offender designation for a conviction of complicity to first degree robbery. Further, Petitioner maintains the final judgment issued by the Henderson Circuit Court did not include a specific finding that death or serious physical injury occurred. Respondent argues Petitioner was properly classified as a violent offender because Petitioner's conviction of complicity to first degree robbery occupies the same status as one being guilty of the principal offense. Further, Respondent argues the Henderson Circuit Court was not required to designate in its Judgment that the Petitioner's complicity to first degree robbery caused death or serious physical injury.

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Petitioner's conviction stems from a robbery, which occurred on December 4, 2013. *See Tyler v. Commonwealth*, 2016 WL 3370931 (Ky. 2016). Petitioner, along with two other individuals, entered a convenient store in Henderson, Kentucky wielding deadly weapons including hatchets and knives. *Id.* at 1. The three assailants ordered two employees to the floor and demanded they open the safe while threatening them with their weapons. *Id.* After removing the safe's contents and leaving the store, one of the individuals was taken into custody and made a statement to police that the Petitioner, Isiah Tyler, had been recruited to participate in the robbery and was one of the three individuals. *Id.* According to the statement, the assailants returned to Tyler's home after leaving the convenient store and split the proceeds. *Id.*

Subsequently, police executed a warrant to search Tyler's home. *Id.* at 2. The search revealed numerous items connecting Tyler to the convenience store robbery:

In the front bedroom of the house, police discovered coins and paper money, coin wrappers, a coin box, bank bags labeled "EZ Shop No. 3," and a piece of a cut-up black shirt. Also in that bedroom, police reportedly found a photo identification card. [...] Police also discovered elsewhere in the house a knife, brass knuckles, a hatchet, hooded sweatshirts and sweatpants, and additional pieces of the cut-up black shirt. *Id.*

Petitioner was convicted by the Henderson Circuit Court of complicity to first-degree robbery and of being a second-degree persistent felony offender (PFO). The jury recommended a prison sentence of forty years, and he was sentenced accordingly. *Id.* Tyler appealed his conviction to the Supreme Court of Kentucky, which affirmed the judgment of conviction and sentence of the Henderson Circuit Court. *Id.* at 5.

STANDARD OF REVIEW

Under Kentucky law, when a court is considering a motion to dismiss under Civil Rule 12.02, "the pleadings should be liberally construed in a light most favorable to the plaintiff and all

allegations taken in the complaint to be true.” *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. 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.” *James v. Wilson*, 95 S.W.3d 875, 883–84 (Ky. App. 2002). In *D.F. Bailey, Inc. v. GRW Engineers Inc.*, 350 S.W.3d 818 (Ky. App. 2011), the Kentucky Court of Appeals discussed a trial court’s standard of review when ruling on a motion to dismiss. “[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

KRS 439.3401, Kentucky’s violent offender statute, requires that an individual identified as 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. Particularly relevant to this matter, KRS 439.3401(1) defines a “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 a victim.
[...]

Petitioner takes issue with the fact that “complicity to first degree robbery” is not an explicitly included in the definition section of a “violent offender” in KRS 439.3401(1). Petitioner’s argument is misguided in that criminal liability for complicity to first degree robbery is inseparable from liability for the underlying crime of first degree robbery. Petitioner’s

conviction included a finding of guilty for violating KRS 515.020, robbery in the first degree. Pursuant to KRS 502.020, Petitioner's complicit conduct resulted in a conviction for the underlying crime of first degree robbery, a Class B felony. A person who is guilty of complicity to a crime occupies the same status as one being guilty of the principal offense. *See Com. v. Combs* 316 S.W.3d 877 (Ky. 2010). "Complicity is not a separate offense. It is rather an alternative theory of the charged offense." *Futrell c. Commonwealth*, 471 S.W.3d 258, 279 (Ky. 2015).

Petitioner also argues he should not be identified as a "violent offender" because the trial court did not specifically make a finding that Petitioner's conduct resulted in death of the victim or serious physical injury to a victim. However, a specific finding that the crime involves death of serious physical injury is not required to identify an individual as a "violent offender" in accordance with KRS 439.3401. The Kentucky Court of Appeals dealt with a question nearly identical to this action in *Campbell v. Ballard*, 559 S.W.3d 869 (Ky. App. 2018) and affirmed this Court's dismissal of a declaratory judgment action. The appellant in *Campbell* challenged the Department of Corrections' classification of Campbell as a violent offender following a plea of guilty to first degree robbery.

Some Class B felons cannot be classified as violent offenders unless the crime involved the death or serious injury to the victim, and the trial court so designates. However, where the Class B felony is robbery, the felon is automatically considered a violent offender. The violent offender statute is clear that any person who has been convicted of or pled guilty to the commission of robbery in the first degree qualifies as a violent offender. No designation by the trial court is required *Id.* at 871.

Campbell became a violent offender when he pled guilty to robbery in the first degree. When the crime involved is first-degree robbery, the violent offender statute applies even without a designation by the trial court regarding whether the victim suffered death or serious injury. The relief Campbell sought from the circuit court, a determination that he does not qualify as a violent offender, is not

authorized. Accordingly, the circuit court properly dismissed Campbell's action for failure to state a claim. *Id.*

The Court is cautious to apply the "violent offender" statute in an overly-rigid manner. However, the nature of Petitioner's conviction includes adequate evidence to support the Department of Corrections' designation. Petitioner's direct involvement with the use of deadly weapons to intimidate and threaten store employees during the commission of a robbery satisfies the requirement to designate an individual as a violent offender under KRS 439.3401.

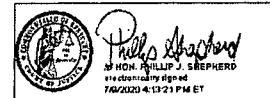
Therefore, the Court finds the Department of Corrections correctly designated Petitioner as a "violent offender" following his conviction of complicity first degree robbery. Complicity to first degree robbery occupies the same status as one being guilty of first degree robbery. Moreover, the trial court was not required to make a specific finding regarding death or serious physical harm in order for the DOC to designate Petitioner a "violent offender."

CONCLUSION

Based on the record and arguments made by parties, the Court finds that Petitioner would not be entitled to relief under any set of facts which could be proved in support of his claim. Therefore, Plaintiff has failed to state a claim upon which relief could be granted pursuant to CR 12.02(f). **WHEREFORE**, the Respondent's Motion is **GRANTED**, and the Petitioner's Petition is hereby **DISMISSED**.

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

SO ORDERED, this 9th day of July, 2020.



PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

Supreme Court of Kentucky

2021-SC-0198-D
(2020-CA-1158)

ISAIAH TYLER

MOVANT

v.

FRANKLIN CIRCUIT COURT
19-CI-01267

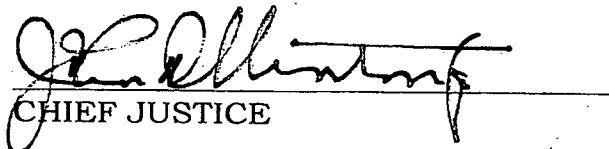
DEPARTMENT OF CORRECTIONS

RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

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

ENTERED: August 10, 2022.


John D. Hartman
CHIEF JUSTICE