

IN THE COURT OF APPEALS
WESTERN SECTION AT NASHVILLE

MARCUS ALLEN,
Petitioner-Appellant,

Davidson Chancery No. 94-1044-III
The Honorable Robert S. Brandt,
Chancellor

Vs.

No. 01A01-9508-CH-00376

AFFIRMED

CHRISTINE BRADLEY,
COMMISSIONER, DEPARTMENT
OF CORRECTION,

Charles W. Burson, Attorney General
and Reporter, Patricia C. Kuseman,
Counsel for State

Respondent-Appellee.

Marcus Allen, Pro Se

FILED

March 22, 1996

MEMORANDUM OPINION¹

Cecil W. Crowson
Appellate Court Clerk

This appeal involves an inmate's allegations that his release eligibility date was improperly calculated by the Tennessee Department of Correction. Plaintiff-Appellant, Marcus Allen ("Allen"), petitioned the chancery court for a declaratory judgment seeking, inter alia, a new calculation of his parole and release eligibility dates. The trial court granted the Motion for Summary Judgment filed by Defendant-Appellee, Christine Bradley, Commissioner, Department of Corrections ("Commissioner"). Allen, acting pro se, perfected the present appeal.

On April 8, 1990, Marcus Allen was convicted of 14 counts of receiving stolen property. He received 14 five year terms, some to be served concurrently and some to be served consecutively, totaling 20 years of service. Allen was sentenced as a Range II multiple offender, making him eligible for parole release after service of 35% of the twenty year sentence, less sentence credits earned and retained. T.C.A. § 40-35-501(d) (Michie 1990 & Supp. 1995).

On October 31, 1991, Allen escaped from Fort Pillow Prison and Farm. He was returned to the prison on March 3, 1992, and on March 30, 1992 a disciplinary hearing was held and, pursuant to TDOC Policy #502.02, Allen's release eligibility date was extended by 20%. Allen was also convicted in Lauderdale County of felony escape and sentenced to one year and six months.

1

Rule 10 (Court of Appeals). Memorandum Opinion--(b) The Court, with concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall not be cited or relied on for any reason in a subsequent unrelated case.

Although Allen has presented several issues for this Court's review, we perceive the dispositive issue to be whether the trial court erred in granting the Commissioner's Motion for Summary Judgment.

A trial court should grant a motion for summary judgment when the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Tenn.R.Civ.P. 56.03. The party moving for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). In *Byrd*, the Court stated:

Once it is shown by the moving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by affidavits or discovery materials, that there is a genuine, material fact dispute to warrant a trial. *Fowler v. Happy Goodman Family*, 575 S.W.2d 496, 498 (Tenn. 1978); *Merritt v. Wilson Cty. Bd. of Zoning Appeals*, 656 S.W.2d 846, 859 (Tenn. Ct. App. 1983). In this regard, Rule 56.05 provides that a nonmoving party cannot simply rely upon his pleadings but must set forth **specific facts** showing that there is a genuine issue of material fact for trial. "If he does not so respond, summary judgment . . . shall be entered against him." Rule 56.05 (Emphasis in original).

Id. at 211.

In the case at bar, the Commissioner filed a Motion for Summary Judgment with accompanying affidavit on June 16, 1994. The affidavit, executed by William O. Keeling, Manager, Sentence Computation Services, Tennessee Department of Correction, stated Allen's sentence effective dates, release eligibility dates, and expiration dates as computed by the TDOC.

On July 22, 1994, Allen filed a motion and affidavit seeking an extension of time in which to respond to the Commissioner's Motion for Summary Judgment. Despite his request for an extension, Allen never filed a response to the Commissioner's motion. It is well established that a nonmoving party cannot rely on his pleadings, but must respond to a motion for summary judgment, by affidavit or otherwise, with specific facts. Tenn.R.Civ.P. 56.05; *Byrd*, 847 S.W.2d at 210. The trial court found that the averments in the Keeling affidavit demonstrated, for the purpose of summary judgment, that the TDOC had not improperly computed Allen's sentence, thereby establishing that no genuine issue of material fact remained in Allen's suit for declaratory judgment.

Allen also asserts in his brief that the extension of his release eligibility date is an ex post facto law. He further argues that the increase policy is not equally applied. Allen's assertion is without merit. There is nothing in the record that supports his assertion. Moreover, there is no constitutional right for a prisoner to be released prior to the expiration of a legally imposed sentence. *Rowland v. Bradley*, 899 S.W.2d 614 (Tenn. Ct. App. 1994).

The trial court correctly granted the motion for summary judgment. Accordingly, the order of the trial court is affirmed. Costs on appeal are taxed to appellant.

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

ALAN E. HIGHERS, JUDGE

DAVID R. FARMER, JUDGE