

JAMES M. BLANKENSHIP, )  
 )  
Petitioner/Appellant, ) Appeal No.  
 ) 01-A-01-9603-CH-00099  
v. )  
 ) Davidson Chancery  
DONAL CAMPBELL, Commissioner, ) No. 95-2608-III  
Department of Correction, )  
et al, )  
 )  
Respondents/Appellees. )

**FILED**

**June 26, 1996**

**Cecil W. Crowson  
Appellate Court Clerk**

COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT FOR DAVIDSON COUNTY  
AT NASHVILLE, TENNESSEE

THE HONORABLE ROBERT S. BRANDT, CHANCELLOR

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AFFIRMED AND REMANDED

O P I N I O N

\_\_\_\_\_This is an appeal by petitioner, James M. Blankenship, from the judgment of the trial court dismissing his petition for declaratory judgment filed pursuant to Tennessee Code Annotated section 4-5-224.

Petitioner filed a petition for a declaratory order in the Department of Correction pursuant to Tennessee Code Annotated section 4-5-223. Petitioner claimed that the Department of Correction violated the ex post facto prohibitions of the Tennessee Constitution and the United States Constitution when it applied Disciplinary Policy Number 502.02 to petitioner. Under this policy, the Department may increase the parole eligibility date of a prisoner who has attempted an escape by twenty percent.

When the Department failed to respond to the petition, petitioner filed a petition for declaratory judgment in the chancery court pursuant to Tennessee Code Annotated section 4-5-224. Thereafter, respondents moved to dismiss the petition on the ground that petitioner failed to state a claim upon which relief could be granted. The court granted respondents' motion on 30 November 1995. The judgment stated as follows: "From a review of the evidence submitted in support of the respondents' motion to dismiss, it appears that the plaintiff's sentence has been correctly calculated accordingly, this case is dismissed at the plaintiff's costs." Petitioner filed a timely notice of appeal as to this judgment.<sup>1</sup>

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<sup>1</sup>Prior to the 30 November order, petitioner filed a motion for summary judgment. On 17 January 1996, the chancery court entered a judgment which stated:

The petitioner has filed a complaint against the Commissioner of the Tennessee Department of Corrections complaining about the calculation of his sentence. After reviewing materials submitted in connection with the defendant's motion for summary judgment, the court concludes that the plaintiff's sentence has been correctly calculated. The case is, therefore, dismissed at the plaintiff's cost.

Petitioner presents two issues: 1) "Did the Chancery Court err by not reducing it's [sic] finding of fact and conclusions of law to writing when dismissing the appellant's petition?" and 2) "Does the application of Tennessee Department of Correction Policy # 502.02 to the terms of the appellant's sentence violate the ex post facto prohibition of the Constitutions of the State of Tennessee and the United States?"

Rule 52.01 of the Tennessee Rules of Civil Procedure requires trial courts to make findings of fact and conclusions of law when requested to do so by a party. Tennessee Code Annotated section 4-5-322 provides that a trial court shall reduce its findings and conclusions to writing when reviewing a final agency decision. The purpose of requiring findings and conclusions in a trial court judgment is to "'promote[] a just and speedy determination of the issues' and facilitate appellate review by the courts and appellate case preparation by the parties." **Bruce v. Bruce**, 801 S.W.2d 102, 104 (Tenn. App. 1990)(citation omitted). Nevertheless, neither the code nor the rules of civil procedure require the court to make particular findings of facts. **Id.** at 105.

In this case, the trial court made findings and conclusions in its judgment. Specifically, the court found that the Department correctly calculated petitioner's sentence. In other words, it found that the Department did not act illegally when it applied Policy Number 502.02 to petitioner's parole eligibility date. The chancellor concluded from this finding that petitioner failed to state a claim upon which relief could be granted and entered

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This order, however, was a nullity. To explain, the 30 November order was a final judgment because it disposed of all the parties' issues and dismissed the case in its entirety. Neither the court nor petitioner acted pursuant to Rule 59 of the Tennessee Rules of Civil Procedure. Thus, the court did not have jurisdiction more than thirty days after the entry of the 30 November judgment.

judgment in the respondents' favor.

The trial court determined the issues in the case and stated its reasons for doing so. The fact that the court did not address petitioner's particular legal theory does not render its decision erroneous. Thus, petitioner's contention that the chancery court violated his right to due process because it did not specifically address his ex post facto argument is without merit.

We next discuss whether the trial court correctly dismissed the petition despite petitioner's claims that extending an inmate's parole eligibility date for a disciplinary infraction is an ex post facto law. The United States Constitution provides that "[n]o state shall . . . pass any . . . ex post facto law..." U.S. Const., art. 1, § 10, cl. 1. An ex post facto law "'imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed.'" **Weaver v. Graham**, 450 U.S. 24, 28, 101 S. Ct. 960, 964, 67 L. Ed. 2d 17, 22 (1991). There are certain factors for courts to consider when determining whether a criminal or penal law violates the prohibitions against ex post facto laws. They include: 1) whether the statute is retrospective in that it applies to events occurring before the law's enactment and 2) whether the application of the statute causes a disadvantage to the offender. **Id.** at 29.

When petitioner was incarcerated, Tennessee Code Annotated section 40-35-501 provided in pertinent part:

(h) The release eligibility date provided for in this section shall be the earliest date a defendant convicted of a felony shall be eligible for release status; such date shall be conditioned on the defendant's good behavior while in prison. For violation of any of the rules of the

Department of Correction or the institution in which the defendant is incarcerated, or while on any release program other than parole, the commissioner of correction or his designees, may defer the release eligibility date so as to increase the total of time a defendant must serve before becoming eligible for release status. This increase, in the discretion of the commissioner, be in any amount of time not to exceed the full sentence originally imposed by the court . . . .

Thus, at the time of petitioner's sentencing, Tennessee Code Annotated section 40-35-501(h) authorized the Department to increase petitioner's release eligibility date as punishment for a disciplinary infraction such as escape. Petitioner's sentence remains unchanged since his original conviction. The statute simply allows the Department to extend the period of time before which petitioner is eligible for parole consideration.

In *Rowland v. Bradley*, 899 S.W.2d 614 (Tenn. App. 1994), an inmate, who was incarcerated in 1986, sought a declaratory judgment. He argued that the Department's policy of extending his parole eligibility date as punishment for his escape in 1988 violated the ex post facto clause of the United States Constitution. This court affirmed the trial court's dismissal of the complaint noting that the Criminal Sentencing Reform Act, which included Tennessee Code Annotated section 40-35-501, had been in effect since 1982. The court concluded the act provided that "individuals sentenced under its provisions could be made to wait longer before being eligible for parole consideration if they have violated the rules of the Department of Correction." *Id.* at 616.

Here, the law did not retroactively inflict a greater punishment on petitioner. His original sentence is unchanged. Tennessee Code Annotated section 40-35-501 was in effect at the time petitioner was sentenced, and it simply requires him to serve a greater percentage of his sentence. There is no merit to petitioner's ex post facto claim.

Therefore, it results that the judgment of the trial court is affirmed, and the cause is remanded to the trial court for further necessary proceedings. Costs are taxed to the petitioner/appellant, James M. Blankenship.

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SAMUEL L. LEWIS, JUDGE

CONCUR:

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BEN H. CANTRELL, JUDGE

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WILLIAM C. KOCH, JR., JUDGE