



COMMONWEALTH OF KENTUCKY
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20-ORD-071

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In re: Jeremy Henley/Kentucky State Penitentiary

Summary: Because this open records appeal was not initiated within 20 days of the agency's denial, the appeal is time-barred under KRS 197.025(3).

Open Records Decision

On January 13, 2020, Kentucky State Penitentiary ("Penitentiary") inmate Jeremy Henley ("Appellant") submitted a request to the Penitentiary for a copy of a document titled "Requisition to obtain reasons requirement as to closed sessions," which Appellant had submitted to Lieutenant Jordan Duncan. On January 24, 2020, the Penitentiary issued a denial stating that no such document existed. On February 21, 2020, Appellant attempted to appeal the denial to the Attorney General, but he failed to perfect his appeal by enclosing a copy of his original request as required by KRS 61.880(2)(a).

On March 6, 2020, Appellant submitted a second request to the Penitentiary for the same record. On March 16, 2020, KSP issued a denial, again asserting that no such record existed. Appellant initiated an appeal of this second denial. His appeal was postmarked Tuesday, April 7, 2020, 22 days after the denial was issued.

This appeal is time-barred. KRS 197.025(3) provides:

KRS 61.880 to the contrary notwithstanding, all persons confined in a penal facility shall challenge any denial of an open record with the

Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.

Appellant did not mail his appeal within 20 days of the denial issued March 16, 2020. Accordingly, the appeal is untimely.

Furthermore, Appellant cannot rely on his prior unsuccessful attempt to appeal the first denial of his request on January 24, 2020. The 20-day deadline for perfecting an appeal under KRS 197.025(3) is mandatory. When a statute creates an administrative right to appeal, "strict compliance and construction of the enabling statute is required." *Sajko v. Jefferson Cty. Bd. of Educ.*, 314 S.W.3d 290, 299 (Ky. 2010). This Office therefore cannot consider this appeal.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceeding.

Daniel Cameron
Attorney General

/s/ James M. Herrick

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