

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2008 CA 2328**

**ALAN McRAE**

**VERSUS**

**STATE OF LOUISIANA DEPARTMENT OF PUBLIC  
SAFETY & CORRECTIONS  
DIVISION OF PAROLE CUSTODIAN/WARDEN**

*Ⓢ*  
*Jmm*  
*J:DP*

Judgment Rendered: JUN 19 2009

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On Appeal from the 19th Judicial District Court  
In and For the Parish of East Baton Rouge  
Trial Court No. 564,109, Division "M(26)"

Honorable Kay Bates, Judge Presiding

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Alan McRae  
Leesville, LA

Plaintiff/Appellant  
In Proper Person

William Kline  
Baton Rouge, LA

Counsel for Defendant/Appellee  
Louisiana Department of Corrections

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**BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.**

**HUGHES, J.**

In this appeal plaintiff/appellant Alan McRae challenges the state's authority to subject him to supervision after an early release from prison for good behavior. Mr. McRae pled guilty to the crimes of distribution of Oxycodone and attempted distribution of marijuana. He was sentenced to 5 years and 7 years, respectively, with the sentences to run concurrent. At his sentencing, he was advised that under LSA-C.Cr.P. art. 894.1(D), his sentence was subject to diminution for good behavior and that his sentence was not enhanced upon the basis of the habitual offender laws, although he had multiple prior convictions.

He was detained at the David Wade Correctional Center and on March 25, 2004 Mr. McRae signed a "Good Time Rate Option and Approval Form" signifying his desire to receive good time at the rate of 30 days for every 30 days in actual custody, pursuant to LSA-R.S. 15:571.3.<sup>1</sup> Mr. McRae's request was approved on March 25, 2004, with his eligibility

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<sup>1</sup> Louisiana Revised Statutes 15:571.3, in pertinent part, states that:

B. (1) Except as provided in Paragraph B(2) of this Section, every inmate in the custody of the department who has been convicted of a felony, except an inmate convicted a second time of a crime of violence as defined by R.S. 14:2(B), and sentenced to imprisonment for a stated number of years or months, or when the sentencing court has denied or conditioned eligibility for "good time" as provided in R.S. 15:537, may earn, in lieu of incentive wages, a diminution of sentence by good behavior and performance of work or self-improvement activities, or both, to be known as "good time."

\* \* \* \*

C. Diminution of sentence shall not be allowed an inmate in the custody of the Department of Public Safety and Corrections if:

(1) The inmate has been convicted one or more times under the laws of this state of any one or more of the following crimes:

\* \* \* \*

(k) Armed Robbery

\* \* \* \*

(m) A violation of R.S. 14:67 which is a felony.

\* \* \* \*

to receive good time effective on November 6, 2002. Mr. McRae was therefore released on October 27, 2005 “as if on parole,” by diminution of sentence in accordance with LSA-R.S. 15:571.5.<sup>2</sup>

Mr. McRae then filed a petition for injunctive relief claiming that because of his prior armed robbery and cattle theft convictions, he should not have been eligible for diminution of his sentence pursuant to LSA-R.S. 15:571.3. He therefore reasons that, although he has benefitted in that he obtained an early release, he should not be required to submit to the release “as if on parole.”

The Commissioner issued a recommendation that the court recognize on its own motion and grant an exception raising the objection of no cause of action. The district court adopted that recommendation and Mr. McRae’s suit was dismissed without prejudice and without an opportunity to amend. Mr. McRae now appeals that judgment.

The function of the exception raising the objection of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the petition. **Ramey v. DeCaire**, 2003-1299, p. 7 (La. 3/19/04), 869 So.2d 114, 118. The only issue before the court in determining whether to grant the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. **Ramey**, 2003-1299 at 7, 869 So.2d at 118. Mr. McRae’s petition requests that he be removed from supervision.

We take notice of the unpublished opinion of **Evans v. Cain**, 2008 2008-0377 (La. App. 1 Cir. 10/31/08), wherein that plaintiff also argued that he was not entitled to parole due to his prior attempted robbery charge, and

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<sup>2</sup> LSA-R.S. 15:571.5, in pertinent part, reads:

A. (1) When a prisoner committed to the Department of Public Safety and Corrections is released because of diminution of sentence pursuant to this Part, he shall be released as if released on parole.

therefore was not entitled to “good time” pursuant to LSA-R.S. 15:571.3. Noting the distinction between “good time parole eligibility by virtue of R.S. 15:571.3-5” and ordinary parole, this circuit held that:

[A]s to the merits, the Petitioner’s claim is a waste of this Court’s time and resources. Good time parole supervision is the law and was the law in 1985. All who are eligible for early release from prison who are not otherwise parolable, must accept supervision pursuant to R.S. 15:571.5 if they are to be released before the full term date. If released, and parole is subsequently revoked, no credit is given for time on the street, and the prisoner must serve the balance of the sentence due as of the date of release—in this case, 2003. There is no legal basis for the Petitioner’s assertion that he is statutorily ineligible for good time or that his previous release should be nullified and he should once again be released in 2008 on the contention that since he was not entitled to the prior release, it is a nullity and he cannot be held accountable for accepting it without complaint.

The court concluded that the claim stated no cause of action upon which relief could be granted and affirmed the lower court’s dismissal of the petition but amended the dismissal to be with prejudice as opposed to without. **Evans**, 2008-0377, at 4.

Likewise, if we accept Mr. McRae’s argument and follow it to its logical conclusion, he was not then entitled to an early release and he should be returned to custody to serve out the remainder of his sentence. That is obviously not what Mr. McRae seeks as a remedy herein. There is no cause of action stated for which relief is available. We affirm the judgment of the district court, but amend it only insofar as we dismiss the case **with** prejudice. All costs of this appeal are to be assessed against plaintiff/appellant, Mr. Alan McRae.

**AFFIRMED AS AMENDED.**