

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2010 CA 2134**

**BRIAN WILLIAMS**

**VERSUS**

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY &  
CORRECTIONS, JAMES LEBLANC, SECRETARY,  
AND JERRY GOODWIN, WARDEN OF DAVID WADE  
CORRECTIONAL CENTER**

Judgment Rendered: May 6, 2011

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On Appeal from the 19<sup>th</sup> Judicial District Court  
for the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 577,831, Section 22

Honorable Timothy Kelley, Judge Presiding

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Brian Williams  
Brusly, LA

Plaintiff/Appellee  
In Proper Person

Susan Wall Griffin  
Baton Rouge, LA

Counsel for Defendants/Appellants  
Louisiana Department of Public Safety &  
Corrections, James M. LeBlanc,  
and Jerry Goodwin

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**BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.**

*Parro, J., concurs in the result.*

## **HUGHES, J.**

This is an appeal of a judgment of the Nineteenth Judicial District Court (19<sup>th</sup> JDC) overturning a final decision of the Department of Public Safety and Corrections (DPSC) as manifestly erroneous. For the following reasons, we reverse.

### **FACTS AND PROCEDURAL HISTORY**

Brian Williams was a prisoner in the custody of the DPSC.<sup>1</sup> On April 15, 2008 Mr. Williams escaped from the LaSalle Correctional Center. Once apprehended, Mr. Williams was taken back into custody and transferred to David Wade Correctional Center, a maximum custody facility. Mr. Williams was subsequently charged and found guilty of violating Disciplinary Rule 8 (escape) and sanctioned by the Disciplinary Board to a forfeiture of 180 days of previously earned good time. He was also notified that he was subject to a forfeiture of all good time earned prior to his escape at a Special Forfeiture Board hearing. After that hearing, Mr. Williams was sanctioned to an additional loss of 172 days, which added to the prior 180 days lost, constituted all good time days earned by Mr. Williams prior to his escape.

Contending that the DPSC lacked the authority to forfeit more than 180 days as a disciplinary sanction for escape, Mr. Williams instituted an action under the Corrections Administrative Remedy Procedure (CARP), LSA-R.S. 15:1171, *et seq.* When he was denied relief at both administrative steps, Mr. Williams filed a petition for judicial review of the DPSC's final decision. After holding several hearings on the matter, the commissioner of the 19<sup>th</sup> JDC issued a recommendation

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<sup>1</sup> Based on the record, it appears that Mr. Williams had been released from custody at the time of the issuance of the commissioner's recommendation. Nevertheless, the commissioner found that Mr. Williams was entitled to declaratory relief.

that the DPSC's decision be overturned as manifestly erroneous, at DPSC's costs.<sup>2</sup> Subsequently, a judgment was signed by the 19<sup>th</sup> JDC adopting the recommendations of the commissioner and reversing the DPSC's decision. The DPSC appeals and makes the following assignments of error:

1. The trial court erred in finding that **Varnier v. Day**, 806 So. 2d, 121 (La. App. 1<sup>st</sup> Cir. 2001), which held that [DPSC] had not properly promulgated its rules regarding forfeiture of all good time earned prior to escape, was applicable in this instance.
2. The trial court erred in finding that because the actions of the Special Forfeiture Board are not contained in the possible disciplinary sanctions for a Schedule B violation that [DPSC] did not have the authority to take additional earned good time, above the disciplinary sanction, for an escape.
3. The trial court erred in finding that [DPSC]'s actions were manifestly erroneous.
4. The trial court erred in assessing [DPSC] with all costs in this matter.

### LAW AND ANALYSIS

Judicial review of an adverse agency decision is available under the CARP, and is "confined to the record," as developed by the administrative proceedings. See LSA-R.S. 15:1177(A)(5). A reviewing court may reverse or modify an agency decision only if substantial rights of the appellant are prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the agency's statutory authority;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) arbitrary, capricious, or characterized by an abuse of discretion; or
- (6) manifestly erroneous.

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<sup>2</sup> The offices of the commissioners of the 19<sup>th</sup> JDC were created by LSA-R.S. 13:711. The commissioners hear and recommend the disposition of criminal and civil proceedings arising out of the incarceration of inmates. LSA-R.S. 13:713. A commissioner's written findings and recommendations are submitted to a district court judge who may accept, reject, or modify them. LSA-R.S. 13:713.

See LSA-R.S. 15:1177(A)(9); **Pacificorp Capital, Inc. v. State Through Div. of Admin., Office of State Purchasing**, 92-1729, p. 4-5 (La. App. 1 Cir. 8/11/94), 647 So.2d 1122, 1125, writ denied, 94-2315 (La. 11/18/94), 646 So.2d 387.

At the time of the disciplinary violation, LSA-R.S. 15:571.4 provided:

A. Determination shall be made by the secretary on a monthly basis as to whether good time has been earned by inmates in the department's custody. Good time which has been earned by inmates in the custody of the Department of Public Safety and Corrections, hereinafter referred to as the "department", shall not be forfeited except as provided in Subsection C of this Section.

B. (1) An inmate who is sentenced to the custody of the Department of Public Safety and Corrections and who commits a simple or aggravated escape, as defined in R.S. 14:110, from any correctional facility, work-release facility or from the lawful custody of any law enforcement officer or officer of the department, or, in the case of an inmate serving a sentence and participating in a work-release program authorized by law, fails to report to or return from his planned employment or other activity under the program may forfeit all good time earned on that portion of his sentence served prior to his escape.

(2) An inmate who has been returned to the custody of the department because of a violation of the terms of parole granted by the Board of Parole shall forfeit all good time earned on that portion of the sentence served prior to the granting of parole.

(3) An inmate who is sentenced to the custody of the department and who commits a battery on an employee of the Department of Public Safety and Corrections or any police officer as defined in R.S. 14:34.2 may forfeit good time earned on that portion of the sentence served prior to committing the battery of such person, up to a maximum of one hundred eighty days.

(4) In all other cases, forfeiture of good time may include up to a maximum of one hundred eighty days.

C. The department shall adopt rules to govern the imposition of the forfeiture of good time for the causes enumerated in Subsection B of this Section. The rules shall be adopted in accordance with the Administrative Procedure Act. The rules shall provide that an inmate has the right to a hearing on any charges which are punishable by the forfeiture of good time and that the inmate may waive that right. The rules shall be consistent with and shall implement the provisions of the constitutional, statutory, and jurisprudential requirements which govern the forfeiture of good time.

(Footnote omitted.)

At the time of Mr. Williams's offense in 2008, *The Louisiana Department of Public Safety and Corrections, Disciplinary Rules for Adult Inmates, December 2000* (Adult Rules), was in effect. These rules provided, in pertinent part:

PENALTY SCHEDULE – DISCIPLINARY REPORT (Heard by Disciplinary Board): After a finding of guilt, the Disciplinary Board may impose one or two of the penalties below:

\* \* \*

#### SCHEDULE B

6. Forfeiture of Good Time – up to a maximum of 180 days for each violation;

#### VIII. DISCIPLINARY RULES

An inmate found guilty of violating one or more of the rules defined below will be punished according to the penalty schedule designated in the rule and the type of hearing provided.

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8. ESCAPE (Schedule B): An escape or attempt to escape from the grounds of an institution or from the custody of an employee outside a facility, successful or not, or the failure to return from a furlough is a violation. La. R.S. 15:571.4 and Department Regulation No. B-04-005 “Forfeiture of Good Time from Inmates who Escape or Commit Battery on an Employee” may provide for forfeiture of good time for aggravated escape or simple escape in addition to the provisions of these procedures. (La. R.S. 14:110A.(2) provides for additional conditions under which an inmate in work release status may be charged under this rule.)

Department Regulation B-04-005, promulgated in October of 1999 and published under Title 22 of the Louisiana Administrative Code in Section 333,<sup>3</sup> sets forth the procedure for the forfeiture of good time from inmates who escape or commit battery on an employee of the DPSC, as provided for in LSA-R.S. 15:571.4(B)(1) and (3). LSA-R.S. 15:571.4(B)(1) further clearly states that an

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<sup>3</sup> At the time of Mr. Williams's Special Forfeiture Board hearing, LAC 22:1.333 was in effect. Section 333 has since been repealed due to the amendments to LAC 22:1.357 in August of 2010.

inmate who escapes “may forfeit all good time earned on that portion of his sentence served prior to his escape.”

The district court entered judgment in favor of Mr. Williams, finding that it was bound by its interpretation of **Varner v. Day**, 00-2104 (La. App. 1 Cir. 12/28/01), 806 So.2d 121. The commissioner’s recommendation, adopted by the district court, interpreted **Varner** to mean that because the greater penalty of a loss of good time days up to the amount the inmate had earned prior to the escape was not also contained in the Adult Rules, it had not been properly promulgated at the time of Mr. Varner’s escape on November 9, 1997. However, we note that since then, the greater sanction of a loss of up to the amount of all good time days earned prior to escape is now included in the Adult Rules under “Escape” and the imposition of the greater penalty has consistently been upheld. See **Victorian v. Stalder**, 99-2260 (La. App. 1 Cir. 7/14/00), 770 So.2d 382; see also **Chamblee v. Stalder**, 03-0061 (La. App. 1 Cir. 11/7/03), 868 So.2d 88; **Treadwell v. Stalder**, 2006-1834 (La.App. 1 Cir. 7/6/07) (unpublished opinion).

While escape is still a Schedule B offense, the rule clearly states that if an offender is found guilty of an escape, “La. R.S. 15:571.4 and Department Regulation No. B-04-005 ‘Forfeiture of Good Time from Inmates who Escape or Commit Battery on an Employee’ may provide for forfeiture of good time for aggravated escape or simple escape **in addition to** the provisions of these procedures.” (Emphasis added.) As such, we find that the district court erred in its application of the **Varner** case in this instance. Accordingly, the judgment of the district court overturning the final agency decision is reversed.

## CONCLUSION

The judgment of the district court overturning the decision of the DPSC is reversed. All costs of this appeal are assessed to plaintiff/appellee, Brian Williams.

**REVERSED.**