

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1880

CAREY VALLIER, JR.

VERSUS

**JAMES LEBLANC, SECRETARY OF LOUISIANA
DEPARTMENT OF CORRECTIONS**

Judgment Rendered: May 2, 2012

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 598,377**

Honorable Timothy Kelley, Judge Presiding

**Carey Vallier, Jr.
Rayville, LA**

Plaintiff/Appellant, pro se

**William Kline
Baton Rouge, LA**

**Counsel for Defendant/Appellee,
Louisiana Department of Public
Safety and Corrections**

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

WHIPPLE, J.

In this appeal, plaintiff, Carey Vallier, Jr., an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the DPSC”), challenges the district court’s dismissal without prejudice of his petition and motion to compel, for failure to exhaust administrative remedies. For the following reasons, we affirm.

PROCEDURAL HISTORY

On January 18, 2011, Vallier filed a letter together with a pleading entitled “Motion to Compel The Louisiana Department of Corrections To Abide By the Court’s Recommendation for Vocational Training,” through which he sought to have the district court compel the DPSC, by writ of mandamus, to place him in an available vocational training school, in accordance with the sentencing court’s recommendation that the DPSC consider placing Vallier in some type of vocational training.

Pursuant to the requirements of LSA-R.S. 15:1178 and LSA-R.S. 15:1188, Vallier’s pleadings were screened prior to the DPSC being served with a copy, and the Commissioner issued a screening report dated February 8, 2011. In her screening report, the Commissioner concluded that Vallier’s complaint about the DPSC’s failure to provide vocational training programs was clearly a grievance governed by the Corrections Administrative Remedy Procedure (CARP), LSA-R.S. 15:1171 *et seq.* Moreover, the Commissioner observed that Vallier did not identify any administrative record for review, did not file his pleadings as an appeal, did not utilize the required appellate form, and did not show that he had exhausted the available administrative remedies. Thus, noting that the district court lacks appellate jurisdiction to review CARP claims unless the petitioner has first exhausted administrative remedies, the Commissioner

recommended that Vallier's suit be dismissed without prejudice and without service on the DPSC, for lack of subject matter jurisdiction in accordance with LSA-R.S. 15:1172 and 15:1176. A copy of the Commissioner's screening recommendation was mailed to Vallier on February 10, 2011.

By judgment dated March 21, 2011, the district court, in accordance with the screening recommendation, dismissed Vallier's suit without prejudice for lack of subject matter jurisdiction pursuant to LSA-R.S. 15:1172 and 15:1176.

Vallier now appeals the district court's March 21, 2011 judgment dismissing his suit without prejudice. Vallier also filed with this court a motion to supplement the record on appeal, which motion was referred to this panel for consideration.

DISCUSSION

Before addressing Vallier's appeal, we first consider his motion to supplement the appellate record. Many of the documents for which Vallier seeks supplementation, such as the Commissioner's Screening Report, the March 21, 2011 judgment, and Vallier's notice of intent to appeal the screening judgment, are already a part of the appellate record. Thus, supplementation with these documents is unnecessary. Moreover, to the extent that Vallier seeks to supplement the record with documents that were not part of the record before the district court, we note that an appellate court must render judgment upon the record on appeal and cannot receive new evidence. LSA-C.C.P. art. 2164; Tranum v. Hebert, 581 So. 2d 1023, 1026 (La. App. 1st Cir.), writ denied, 584 So. 2d 1169 (La. 1991). Accordingly, Vallier's motion to supplement is denied.

Turning to the merits of Vallier's appeal, LSA-R.S. 15:1178(B) mandates a "judicial screening" procedure by the district court to determine

if the petition states a cognizable claim or if the petition, on its face, is frivolous or malicious, or fails to state a cause of action. This screening is performed prior to service of the petition on defendants. Additionally, pursuant to LSA-R.S. 15:1188(A), a provision of the Prisoner Litigation Reform Act, the court may screen the case before docketing to identify “cognizable claims” and may dismiss the petition for the failure “to state a claim upon which relief can be granted” in addition to those remedies listed in LSA-R.S. 15:1178. Frederick v. Ieyoub, 99-0616 (La. App. 1st Cir. 5/12/00), 762 So. 2d 144, 147, writ denied, 2000-1811 (La. 4/12/01), 789 So. 2d 581; Peterson v. Toffton, 36,372 (La. App. 2nd Cir. 9/18/02), 828 So. 2d 160, 163, writ denied, 2002-3073 (La. 1/30/04), 865 So. 2d 63. In the instant case, the district court utilized this screening process to dismiss Vallier’s petition on the basis that he had failed to allege that he had exhausted administrative remedies and that the court, accordingly, lacked subject matter jurisdiction to consider his claim.

While Vallier’s suit is styled as a “Motion to Compel,” the complaint set forth therein raises issues regarding a condition of his confinement, which claims must be pursued initially through CARP. LSA-R.S. 15:1171(B). Pursuant to LSA-R.S. 15:1176, no state court shall entertain an inmate’s grievance or complaint which falls under the purview of CARP unless and until the inmate has exhausted available administrative remedies. Accordingly, where an inmate fails to exhaust available administrative remedies, the district court and the appellate court lack subject matter jurisdiction to review the claim. See Hull v. Stalder, 2000-2730 (La. App. 1st Cir. 2/15/02), 808 So. 2d 829, 831, 833. Thus, the district court’s judgment dismissing Vallier’s suit on the basis of lack of subject matter jurisdiction certainly was warranted at the time it was rendered, given the

lack of any allegations or evidence that Vallier had first exhausted administrative remedies prior to filing suit in district court.

Moreover, although Vallier filed a pleading entitled “Appeal from the Commissioner’s Findings,” through which he sought to traverse the Commissioner’s findings (which we will refer to hereinafter as his “traversal”), his traversal was not filed until March 29, 2011, forty-seven days after the Commissioner’s screening recommendation was transmitted to him and eight days after the district court dismissed his suit and, thus, was untimely.¹

Additionally, in her Screening Report, the Commissioner alternatively recommended dismissal of Vallier’s suit without service because, under the facts alleged, Vallier’s request for vocational rehabilitation failed to raise any substantial or constitutional right for which the district court could intervene in the DPSC’s discretionary decisions. We note that although untimely filed, Vallier did assert in his traversal that he had filed an ARP (Administrative Remedy Procedure) and attached as exhibits: (1) an August 22, 2010 letter that he wrote to the DPSC secretary, seeking information on the status of a first-step ARP he had filed (but which he did

¹The office of commissioner for the Nineteenth Judicial District Court was created by LSA-R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. *Owens v. Stalder*, 2006-1120 (La. App. 1st Cir. 6/8/07), 965 So. 2d 886, 888 n.6. The commissioner’s written findings and recommendations are submitted to a district court judge, and a copy of the report shall also be mailed to all parties or their counsel of record. LSA-R.S. 13:713(C)(2). Any party may then traverse such findings or recommendations made by the commissioner in writing **within 10 days after transmittal** of the copy of the commissioner’s findings and recommendations. LSA-R.S. 13:713(C)(3).

In his traversal, Vallier implicitly acknowledged that the traversal was not timely, averring that “before the time limitation elapsed, he asked the 19th J.D.C. for an Extension.” However, the record before us contains a letter from Vallier received by the district court on March 7, 2011, twenty-five days after the Commissioner’s screening recommendation was transmitted to Vallier, in which Vallier sought an “Extension of Return Date for Notice of Intent to Appeal the Commissioner’s Findings.” Thus, Vallier’s request for an extension of time was likewise not filed within the 10-day period for filing a traversal. His request for an extension of time was not acted upon by the district court.

not identify by case number), seeking transfer to another facility so that he could pursue vocational training as recommended by the sentencing court; and (2) a second-step response in case number HDQ-2010-2049, dated October 12, 2010, which appears to be in response to his August 22, 2010 letter and in which the DPSC Secretary or his representative informed Vallier that Vallier “should contact the warden at [his] facility to request a transfer to another facility.” However, in the traversal, Vallier stated that, at the time he filed his ARP, he was housed at Claiborne Parish Detention Center, and he then acknowledged that **in response to his ARP**, he was transferred on November 22, 2010, to Elayn Hunt Correctional Center.²

Accordingly, because Vallier’s petition and the record as a whole do not disclose a basis for the district court’s exercise of jurisdiction, we find no error in the district court’s judgment dismissing Vallier’s suit without prejudice.

CONCLUSION

For the above and foregoing reasons, Vallier’s motion to supplement the record on appeal is denied. The March 21, 2011 judgment of the district court dismissing Vallier’s suit without prejudice is affirmed. Costs of this appeal are assessed against plaintiff, Carey Vallier, Jr.

MOTION TO SUPPLEMENT RECORD DENIED; JUDGMENT AFFIRMED.

²Notably, Vallier also attached to his traversal a November 5, 2010 request for ARP, again complaining that the facility to which he was assigned at that time did not offer the vocational training that was needed. But he also averred in the late-filed traversal that he was subsequently transferred to Bossier Medium Security Facility on December 6, 2010, which he contended also offers “nothing to an offender seeking job employment opportunities upon his release.” However, we note that inmates may not challenge multiple ARPs in one petition for judicial review. Lightfoot v. Stalder, 97-2626 (La. App. 1st Cir. 12/28/98), 727 So. 2d 553, 555.