

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2008 CA 0704**

**CARLES J. JOHNSON**

**VERSUS**

**TERRY TERREL, WARDEN, AND PRISCILLA PITRE, RECORDS  
ANALYST AT ALLEN CORRECTIONAL CENTER AND RICHARD  
STALDER, SECRETARY, LOUISIANA DEPARTMENT OF  
CORRECTIONS**

**Judgment Rendered: September 12, 2008**

**Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Docket Number 554,177**

**Honorable Janice Clark, Judge Presiding**

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**Carles Johnson  
Kinder, LA**

**Plaintiff/Appellant, pro se**

**Susan Wall Griffin  
Baton Rouge, LA**

**Counsel for Defendant/Appellee,  
Richard Stalder**

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**BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.**

**WHIPPLE, J.**

This is an appeal by plaintiff, Carles Johnson, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the DPSC), from a judgment of the district court, reversing the administrative decision of the DPSC pursuant to plaintiff's petition for judicial review of a grievance he filed with the DPSC pursuant to the Corrections Administrative Remedy Procedure (CARP), LSA-R.S. 15:1171 et seq. Although the district court granted relief in plaintiff's favor, he contends on appeal that the district court erred in failing to grant him all of the relief requested.

After being released "as if on parole"<sup>1</sup> for an armed robbery conviction in Louisiana (East Baton Rouge Parish docket number 10-93-247), plaintiff, under an alias, was convicted in Florida of grand theft auto and was sentenced to a term of 2 years, 3 months, and 27 days to be served concurrently with "any active sentence being served." Thereafter, the DPSC Division of Probation and Parole requested that the Florida Department of Corrections detain plaintiff, noting that plaintiff was wanted by the DPSC as a parole violator. However, the DPSC subsequently requested that the Florida Department of Corrections remove the DPSC's requested parole violation detainer, stating that it was forwarding plaintiff's Louisiana parole file to the DPSC Office of Adult Services "to determine if [the DPSC] need[ed] to request notification from your agency [i.e., the Florida Department of Corrections,] upon release of subject."<sup>2</sup>

Upon completion of his Florida sentence, plaintiff's release as if on parole under East Baton Rouge Parish docket number 10-93-247 was

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<sup>1</sup>When an inmate is released by diminution of sentence for good behavior, the inmate is released "as if released on parole," and the release is governed by the rules concerning release on parole. LSA-R.S. 15:571.3 & 15:571.5.

revoked.<sup>3</sup> However, plaintiff was not given credit on this sentence for the time served in Florida on the grand theft auto conviction.

Thus, plaintiff filed the instant grievance, contending that because his Florida sentence was ordered to be served concurrently with any other active sentence he was serving, he was entitled to credit toward the Louisiana sentence for the twenty-eight months he spent in custody in Florida. Plaintiff further contended that when the DPSC removed the detainer it had lodged with the Florida Department of Corrections following his Florida conviction, the DPSC effectively terminated plaintiff's parole, and, thus, his release as if on parole under docket number 10-93-247 could not subsequently be revoked.

Plaintiff's request for an administrative remedy was denied at both steps of the administrative level. Plaintiff then instituted a petition for judicial review in the district court below. In his petition, plaintiff sought review of the denial of his grievance and sought to have his "parole" under docket number 10-93-247 discharged and to have the DPSC credit his sentence with the time he served in Florida.

In his recommendation, the Commissioner, citing LSA-C.Cr.P. art. 883.1(A), LSA-R.S. 15:574.10, State ex rel. Turner v. State, 2004-2842 (La. 6/24/05), 906 So. 2d 399, and Dorman v. Ward, 97-1662 (La. App. 1<sup>st</sup> Cir. 6/29/98), 718 So. 2d 474, writ denied, 98-2497 (La. 4/23/99), 740 So. 2d

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<sup>2</sup>According to plaintiff, after he notified the DPSC Division of Probation and Parole that he was serving a sentence in Florida and provided a certified copy of the Florida sentencing minutes, the DPSC agreed to remove its detainer.

<sup>3</sup>As noted by the commissioner in his recommendation, plaintiff also had subsequent convictions in Louisiana, as reflected on his master prison record. However, the issue herein of any credits due to plaintiff for the time he served in Florida is limited to the Louisiana sentence under East Baton Rouge Parish docket number 10-93-247, the only Louisiana sentence he was serving at the time he was sentenced in Florida.

647, concluded that because plaintiff's Florida sentence provided that it was to be served concurrent to "any active sentence being served," the DPSC should have given plaintiff credit toward his Louisiana sentence for armed robbery under East Baton Rouge Parish docket number 10-93-247, given that the Louisiana sentence was not completed at the time plaintiff was sentenced in Florida.<sup>4</sup> Thus, the commissioner recommended that the final agency decision be reversed as manifestly erroneous and an abuse of discretion and that the DPSC be required to recalculate plaintiff's sentence under East Baton Rouge Parish docket number 10-93-247 to credit plaintiff for time served in Florida for his subsequent grand theft auto conviction. In accordance with the commissioner's recommendation, the district court rendered judgment, reversing the final agency decision and ordering the DPSC to recalculate plaintiff's master prison record.<sup>5</sup>

From this judgment, plaintiff appeals, contending that the district court erred in failing to address his argument that the DPSC's removal of the parole violation detainer it had issued subsequent to his conviction in Florida

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<sup>4</sup>Louisiana Code of Criminal Procedure 883.1 provides that when serving a concurrent sentence in a correctional institution of another state, the inmate shall receive credit for time served as allowed under the laws of this state. Louisiana Revised Statute 15:574.10 provides that when a person is convicted under the laws of any other state while on parole for a crime which if committed in Louisiana would be a felony, his parole shall be deemed revoked as of the date of the commission of the offense under the laws of the other jurisdiction. This statute further provides that the sentence of imprisonment on the new felony shall be served consecutively to the term of imprisonment for violation of parole unless the sentencing court expressly directs a concurrent term of imprisonment.

In Turner, the Louisiana Supreme Court, in applying LSA-R.S. 15:574.10, concluded that a sentence ordered to run concurrently to "whatever time [relator was] currently serving," language similar to the language at issue herein, encompassed the time owed as a result of parole revocation on the original sentence. Turner, 906 So. 2d at 399. In Dorman, this court concluded that where an inmate is convicted of a new felony in another state while on parole supervision on a prior offense in Louisiana, the sentencing court may expressly provide that the sentence on the new felony run concurrent to the balance owed on the prior sentence following revocation of parole. Dorman, 718 So. 2d at 476.

<sup>5</sup>Prior to rendition of the district court's judgment, the DPSC filed in the record below a Notice of Compliance, stating that it had corrected plaintiff's master prison record to reflect credit on plaintiff's sentence under East Baton Rouge Parish docket number 10-93-247 for time served in Florida, in accordance with the commissioner's recommendation.

had the effect of terminating his “parole” under East Baton Rouge Parish docket number 10-93-247 and, thus, in failing to rule that the subsequent revocation of his release as if on parole was erroneous.

Louisiana Revised Statute 15:1177(A)(9) sets forth the appropriate standard of judicial review by the district court, which functions as an appellate court when reviewing the DPSC’s administrative decision through CARP. Specifically, the court may reverse or modify the administrative decision only if substantial rights of the appellant have been prejudiced because the administrative decision or findings are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary, capricious or characterized by abuse of discretion; or (6) manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. LSA-R.S. 15:1177(A)(9); Lightfoot v. Stalder, 2000-1120 (La. App. 1<sup>st</sup> Cir. 6/22/01), 808 So. 2d 710, 715-716, writ denied, 2001-2295 (La. 8/30/02), 823 So. 2d 957.

On review of the district court’s judgment in a suit for judicial review under LSA-R.S. 15:1177, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. McCoy v. Stalder, 99-1747 (La. App. 1<sup>st</sup> Cir. 9/22/00), 770 So. 2d 447, 450-451.

Based upon our review of the administrative record and pursuant to LSA-R.S. 15:1177(A)(9), we agree that the district court correctly concluded that Johnson was entitled to credit toward his sentence under East Baton Rouge Parish docket number 10-93-247 for time served in Florida. In his recommendation, which we attach hereto as “Appendix A” and make a part

hereof, the commissioner specifically outlined the statutory and jurisprudential support for Johnson's entitlement to credit for time served in Florida.

However, we find no merit to plaintiff's contention that the district court erred in rejecting his claim that the DPSC's removal of the parole violation detainer it had issued to the Florida Department of Corrections subsequent to his conviction in Florida somehow had the effect of terminating his "parole" under East Baton Rouge Parish docket number 10-93-247 and, thus, that the subsequent revocation of his release as if on parole was erroneous.

An inmate released on parole or "as if on parole," while no longer in the physical custody of the DPSC, remains in the legal custody of the DPSC during his parole term. Robinson v. Parole & Probation Division, Department of Public Safety & Corrections, 2000-1574 (La. App. 1<sup>st</sup> Cir. 9/28/01), 819 So. 2d 1031, 1033. The parole term shall be for the remainder of the parolee's sentence, without any diminution of sentence for good behavior. LSA-R.S. 15:574.6. Thus, a parolee is discharged from parole, and consequently released from the legal custody of the DPSC, only when the parolee has completed his full parole term, provided certain other conditions are met. LSA-R.S. 15:574.6; see Mole v. Louisiana Board of Parole, 93-1524 (La. App. 1<sup>st</sup> Cir. 5/20/94), 637 So. 2d 785, 787. If, however, as here, the parolee violates his parole by being convicted of a felony under the laws of any other state while on parole, his parole shall be deemed revoked as of the date of the commission of the offense under the laws of the other jurisdiction. LSA-R.S. 15:574.10. He shall then serve the remainder of his original sentence as of his release on parole, subject to

credit for time served on any sentence ordered to be served concurrent thereto. LSA-R.S. 15:574.9(E); LSA-R.S.15:574.10.

Plaintiff has failed to cite any support for his argument that the DPSC's request that the Florida Department of Corrections remove the requested parole violation detainer affected the DPSC's continued legal custody over plaintiff. Rather, pursuant to the above-cited statutes, plaintiff clearly remained in the legal custody of the DPSC (even though not in its physical custody) subsequent to his "release as if on parole," and the DPSC's request that the Florida Department of Corrections remove the requested parole violation detainer during the time while plaintiff was serving his concurrent Florida sentence did not act to terminate or extinguish his "parole" under East Baton Rouge Parish docket number 10-93-247. This argument has no merit.

After a thorough review of the record herein, we find that the district court granted plaintiff all relief to which he was entitled. See LSA-R.S. 15:1177(A)(9)(a), (d), (e) & (f). Thus, in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B), the district court's judgment is affirmed. Costs of this appeal are assessed against plaintiff, Carles Johnson.

**AFFIRMED.**

CARLES J. JOHNSON

\* NO. 554-177 DIVISION: D

\* 19TH JUDICIAL DISTRICT COURT

vs.

\* PARISH OF EAST BATON ROUGE

\* STATE OF LOUISIANA

TERRY TERELL, ET AL

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COMMISSIONER'S RECOMMENDATION

The petitioner filed this request for relief pursuant to R.S. 15:1177 seeking judicial review of the final agency decision rendered under Administrative Remedy Procedure No. ALC- 2006-1247. The petitioner seeks credit toward his sentence under East Baton Rouge Parish Docket No. 10-93-247 for time served in Florida on a Grand Theft Auto conviction under Santa Rosa County Docket No. 00001305CFMA. The petitioner alleges the decision rendered in *Dorman v. Ward* 718 So. 2d 474, (La. App. 1 Cir. 1998) applies to this matter and requires the Department of Corrections to grant credit on his East Baton Rouge sentence for time actually served on his Florida sentence. This matter was stayed to allow the petitioner to expand the administrative record in this matter with documentation regarding his Florida sentence. The petitioner obtained documentation from his Florida court and attached a five page minute record/ commitment form under Santa Rosa County Docket No. 00001302CFMA to a request to lift the stay in this matter. The petitioner was sentenced in Florida under an alias and at the hearing conducted in this matter the defendants acknowledged the Florida records reflected the use of an alias by the petitioner. This Commissioner ordered the stay lifted and this matter proceeded to additional oral argument to allow the parties to address the issues raised by the expanded administrative record. The defendants had not previously been provided with the documentation regarding the petitioner's Florida sentence at issue and were allowed an opportunity to address the issues raised in this matter in light of the newly provided information regarding the petitioner's Florida sentence. It should

42



be noted the petitioner seeks credit on the balance owed, following revocation of release as if on parole, under East Baton Rouge Parish Docket No. 10-93-247. The petitioner has subsequent convictions as reflected on his master prison record, but seeks credit on East Baton Rouge Parish Docket No. 10-93-247 in this matter.

The *Dorman* decision provided that where a Louisiana inmate is released on parole supervision and subsequently is convicted of a felony in another state, the inmate is entitled to credit toward the balance owed on his Louisiana sentence for any time served on his out-of-state conviction, provided the out-of-state sentencing court expressly provides that the out-of-state sentence and the Louisiana sentence be served concurrently. In the *Dorman* case Mr. Dorman relocated to Florida following his release on parole supervision. While in Florida, Mr. Dorman was convicted and sentenced on Florida theft charges. The Florida sentencing court, when imposing sentence, specified that Mr. Dorman's Florida time was to run concurrent to any balance owed on his prior Louisiana sentence. The *Dorman* decision noted La. C.Cr.P. art 883.1(A) provided that when serving concurrent time in another state a defendant shall receive credit as allowed by law on a Louisiana sentence. *Dorman* also noted that R.S. 15:574.10 provides that where an inmate receives a new felony conviction while on parole supervision on a prior offense, a sentencing court may expressly provide that the sentence on the new felony run concurrent to the balance owed on the prior sentence following revocation of release on parole. *Dorman* holds that the provisions of R.S. 15:574.10 apply where the sentencing court on the new felony is a court in another state.

The record filed in this matter indicates the petitioner was released on good time parole supervision under East Baton Rouge Parish Docket No. 10-93-247 on June 28, 1998. The petitioner was deemed by the defendants to have absconded from supervision on December 12, 2000. The petitioner denied he actually absconded. The petitioner was subsequently arrested in the State of

Florida. The May 16, 2004 minute record/ commitment under Santa Rosa County Docket No. 00001305CFMA indicates the petitioner received a 2 year, 3 month and 27 day sentence on a conviction for Grand Theft Auto that was to be served concurrent with "any active sentence being served." The petitioner contends that his Florida sentencing court has expressly provided that his Florida time run concurrent to any sentence he was serving at that particular time and that the provisions of his Florida sentence applies to the balance of time owed on his East Baton Rouge sentence. The petitioner contends that at the time he was sentenced in Florida the only sentence he owed time on was his East Baton Rouge sentence and that his East Baton Rouge sentence was an active sentence. The defendants contend that the petitioner was not serving a sentence when he received his Florida time as he had absconded parole supervision. The defendants contend the petitioner was not receiving any credit for the period of time he had absconded supervision and should not be considered to be serving an active sentence at the time sentence was imposed in Florida. The defendants also contend the Florida sentencing court did not expressly provide for petitioner's Florida sentence to run concurrent to his Louisiana parole balance because the Florida court did not utilize the word "Louisiana" when imposing a concurrent sentence. The defendants contend the *Dorman* decision requires the Florida court must refer to the Louisiana sentence by name in order for the rule announced in *Dorman* to apply.

This Commissioner finds the Florida sentencing court specified that the Florida sentence run concurrent to any other active sentence the petitioner was serving. The language utilized by the Florida court means what it says and applies to any sentence the petitioner is currently serving. The use of the word "any" can only mean the Florida court intended the Florida sentence on the new felony conviction to run concurrent to any sentence imposed in any jurisdiction. This Commissioner notes that the use of such broad phrases as "whatever time the defendant was currently serving" have been interpreted to

refer to any sentence being served and there is no requirement that a sentencing court detail each and every particular prior sentence a defendant is serving when qualifying a newly imposed sentence as to be served concurrent to any prior sentence. In the decision rendered in *Turner v. State of Louisiana*, 906 So. 2d 399 (La. 2005) the Louisiana Supreme Court, when considering the application of R.S. 15:574.10, recognized the use of the phrase "whatever time [relator was] currently serving" encompassed and referred to a balance of time owed after parole revocation on a prior conviction. In this matter the Florida court made an express statement that the Florida sentence was to run concurrent to any sentence the petitioner was serving. Although at the time of sentencing in Florida the petitioner might have been serving a number of sentences in any number of jurisdictions, the Florida court expressly provided his sentence was to be served concurrent to any sentence the petitioner was serving.

The petitioner clearly owed the State of Louisiana a period of time on his East Baton Rouge Parish sentence and had not completed that particular sentence at the time he was sentenced in Florida. The fact the petitioner may have absconded from parole supervision does not release the petitioner from the legal authority of the State of Louisiana and although the petitioner may have been out of the physical custody of the State of Louisiana, he was not released from legal custody. The petitioner's sentence was not completed and must be considered an active sentence under the terms of the Florida sentence. The petitioner was under the legal custody of the State of Louisiana and although the petitioner may not have been actually earning credit on his East Baton Rouge sentence, he still owed time on that particular sentence and should be considered as serving his East Baton Rouge sentence at the time his Florida sentence was imposed.

The source of the authority for the Florida court to specify how a Louisiana sentence is to be served is R.S. 15:547.10. The *Dorman* decision recognized use

45

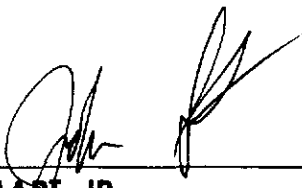
of the word "court" in R.S. 15:574.10 does not refer to only Louisiana courts and, as noted previously, may be interpreted to refer to an out-of state court.

*Dorman*, 718 So.2d at 476. This Commissioner finds no authority to support the Department's contention that the Florida court was required to utilized any more specific or express language when qualifying the Florida sentence as to be served concurrent to any other active sentence. The Florida court specified the Florida sentence was to run concurrent to any sentence the petitioner was serving and this Commissioner finds that the Florida court made an express statement that the Florida sentence was to run concurrent to any sentence the petitioner was serving at that time. The *Dorman* decision should be applied in this matter to require the Department of Corrections to recalculate the petitioner's sentence in a manner to provide credit on East Baton Rouge Parish Docket No. 10-93-247 for time served on Santa Rosa County Docket No. 00001305CFMA. Any additional information required to recalculate the petitioner's sentence should be obtained by the Department.

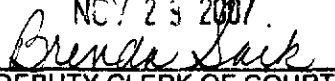
Accordingly, it is the recommendation of this Commissioner that the final agency decision rendered in this matter be reversed pursuant to R.S. 15:1177(A) (9) based on the finding the Department's final administrative decision is manifestly erroneous and constitutes an abuse of discretion. The defendants should be ordered to recalculate the petitioner's master prison record in accord with the findings of this recommendation. All costs in this matter are to be paid by the defendants.

Respectfully recommended this 29 day of Nov.

2007.

  
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JOHN M. SMART, JR.  
COMMISSIONER, SECTION B  
19TH JUDICIAL DISTRICT COURT

**FILED**

NOV 29 2007  
  
DEPUTY CLERK OF COURT

46