

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1527

CHARLES HARDIN

VERSUS

**RICHARD STALDER, SECRETARY, DEPARTMENT OF CORRECTIONS &
BURL CAIN, WARDEN, LA STATE PENITENTIARY**

Judgment Rendered: MAR 25 2011

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On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. 553,648

Honorable William A. Morvant, Judge Presiding

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Charles Hardin
Dixon Correctional Center
Jackson, Louisiana

Plaintiff/Appellant
In Proper Person

Terri L. Cannon
Baton Rouge, Louisiana

Counsel for Defendant/Appellee
Department of Public Safety &
Corrections

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BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

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McCLENDON, J.

Plaintiff, Charles Hardin, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the Department), challenges a judgment of the district court dismissing his petition for judicial review. For the following reasons, we affirm.

On December 14, 2006, plaintiff filed an Administrative Remedy Procedure (ARP) seeking parole eligibility on his thirty-five-year sentence for three armed robberies. On December 28, 2006, the Department denied plaintiff's request for relief in its First Step Response, noting that his "crime of armed robbery is not statutorily eligible for parole." In denying his Second Step Request on February 27, 2007, the Department again noted that plaintiff was "ineligible for parole consideration" because of his thirty-five year sentence "for a crime of violence (armed robbery) that was committed on or about March 14, 1997."

On March 27, 2007, plaintiff filed his petition for judicial review of the ARP in district court, claiming that he pled guilty on the condition that he would be parole eligible after serving ten years of his sentence. The commissioner issued a report on September 28, 2009, noting that for the reasons stated by the Department, the Department's decision was correct that plaintiff was not entitled to parole eligibility after serving one-third of his sentence. The commissioner noted that in 1997, LSA-R.S. 14:64 defined armed robbery and set the penalty therefor at a maximum of up to ninety-nine years, without benefit of parole, probation, or suspension of sentence. The commissioner, while agreeing with the plaintiff that the sentencing court did not specifically deny parole eligibility on his sentence, determined that plaintiff's case was controlled by LSA-R.S. 15:301.1A¹ and **State v. Williams**, 00-1725 (La. 11/28/01), 800 So.2d 790. The commissioner cited the following language from **Williams**:

¹ Paragraph A of LSA-R.S. 15:301.1 provides:

When a criminal statute requires that all or a portion of a sentence imposed for a violation of that statute be served without benefit of probation, parole, or suspension of sentence, each sentence which is imposed under the provisions of that statute shall be deemed to contain the provisions relating to the service of that sentence without benefit of probation, parole, or suspension

Paragraph A of LA.REV.STAT. ANN. § 15:301.1 addresses those instances where sentences contain statutory restrictions on parole, probation or suspension of sentence. See *e.g.*: LA.REV.STAT. ANN. § 14:64 (armed robbery); ... In instances where these restrictions are not recited at sentencing, LA.REV.STAT. ANN. § 15:301.1(A) deems that those required statutory restrictions are contained in the sentence, whether or not imposed by the sentencing court. Additionally, this paragraph self-activates the correction and eliminates the need to remand for a ministerial correction of an illegally lenient sentence which may result from the failure of the sentencing court to impose punishment in conformity with that provided in the statute.

Williams, 00-1725 at p. 10, 800 So.2d at 798-99.

The commissioner further noted that the minutes in plaintiff's case did not reflect any plea agreement and although LSA-R.S. 15:301.1 was enacted in 1999, it could be applied retroactively. See **Williams**, 00-1725 at p. 1, 800 So.2d at 793. Accordingly, the commissioner concluded that the court was bound by the applicable statutory law and recommended that the Department's decision be affirmed. On October 29, 2009, the district court rendered judgment adopting as reasons the commissioner's report, thereby affirming the administrative decision and dismissing plaintiff's appeal with prejudice at his costs. This appeal followed.

After a thorough review of the record and relevant law and jurisprudence, we find that the district court's reasons for judgment, as set forth in the commissioner's recommendation, adequately explained the decision, and we find no error of law. Accordingly, we affirm the October 29, 2009 judgment of the district court in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2A(2), (5), and (6) . All costs of this appeal are assessed to the plaintiff, Charles Hardin.

AFFIRMED.

of sentence. The failure of a sentencing court to specifically state that all or a portion of the sentence is to be served without benefit of probation, parole, or suspension of sentence shall not in any way affect the statutory requirement that all or a portion of the sentence be served without benefit of probation, parole, or suspension of sentence.