

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 2318

CHARLES N. SIMON, JR.

VERSUS

RICHARD L. STALDER, ET AL.

Judgment Rendered: MAY - 8 2009

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 557,476

Honorable Kay Bates, Judge

Charles N. Simon, Jr.
Kinder, LA

In Proper Person
Plaintiff – Appellant

Jonathan R. Vining
Baton Rouge, LA

Attorney for
Defendants – Appellees
Richard L. Stalder, et al.

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

JLW
RHP
JMC

WELCH, J.

Charles N. Simon, Jr., an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the Department”) confined to Allen Correctional Center in Kinder, Louisiana, appeals a judgment of the district court dismissing his petition for judicial review of the final agency decision in Disciplinary Board Appeal No. ALC-2007-055. We affirm in accordance with Uniform Court of Appeal Rules 2-16.2(A)(4), (5), (6), and (8).

According to Simon’s petition, he was charged with violating Rule #30(c)—General Prohibited Behavior of the institution’s disciplinary rules, for entering the law library without authorization. At the disciplinary hearing, he pled guilty to the charge and was sanctioned by the loss of 30 days of good time and a custody change to a maximum, working cellblock, which was suspended for 90 days. The maximum penalty that could be imposed for the plaintiff’s offense was a loss of 180 days of good time. Simon’s appeal of that penalty within the institution was denied, and after exhausting his administrative remedies, he filed this petition for judicial review with the district court.

Simon alleges in his petition that he entered the guilty plea based on incorrect legal advice from inmate counsel, because the charges against him did not include facts falling within Rule #30(c). He contends he should have been charged with violating Rule #24—Unauthorized Area, which had a less severe penalty than a violation of Rule #30.¹ Simon also contends that his custodian, a private prison contractor, is prohibited from taking good time as a disciplinary penalty pursuant to La. R.S. 39:1800.5. After a thorough review of the record, on July 30, 2008, the commissioner recommended to the district court judge that the final agency decision be affirmed and that Simon’s petition be dismissed with prejudice. That recommendation was accepted, and a judgment to that effect was

¹ The maximum penalty for violating Rule #24—Unauthorized Area was a loss of 30 days of good time.

rendered and signed on September 17, 2008.

As the commissioner noted in his recommendation, the audio record of the disciplinary hearing indicates that the plaintiff freely and knowingly entered his guilty plea to the Rule #30(c) charge with the expectation that he would receive the penalty that was actually imposed. Therefore, the commissioner reasoned that with the exception of Simon's claim that the private prison contractor did not have the authority to take good time as a disciplinary penalty pursuant to La. R.S. 39:1800.5, Simon waived the opportunity to challenge his disciplinary charge or the penalty imposed in all claims alleged in this matter.

With regard to Simon's challenge to a private prison contractor's authority to impose forfeiture of good time for a disciplinary penalty, the commissioner noted that this court's decision in **Singleton v. Wilkinson**, 2006-0637 (La. App. 1st Cir. 2/14/07), 959 So.2d 969, provides that an inmate in a private prison facility may lose good time as part of a disciplinary penalty where the Department exercises oversight and approval to validate a private prison contractor's decision to impose a forfeiture of good time as a disciplinary penalty. The commissioner further noted that because the incident report filed in the record contained a notation dated March 14, 2007, by Ms. Priscilla Pitre, the Department employee who approved and actually imposed the loss of good time in this matter, the Department submitted proof in the disciplinary appeal record that the loss of good time was approved by the Department. Therefore, the commissioner concluded that Simon failed to show that his good time was taken without authority, and he was not entitled to relief.

After a thorough review of the entire record of these proceedings, we find no error in the judgment of the district court. The record from the hearing before the disciplinary board does not reflect that Simon raised the issue that his conduct did not rise to the level of a Rule #30(c) violation, as reflected on the face of the

incident report, or that he should have been charged with a rule violation that carried a lesser penalty, such as Rule #24. Simon had the opportunity to challenge the allegations of the charge against him, but instead chose to accept the advice of his inmate counsel and entered a voluntary plea of guilty to a charge of a Rule #30(c) violation. Thus, because Simon freely and knowingly entered his guilty plea to the Rule #30(c) violation, he waived the opportunity to challenge the disciplinary charge.

Furthermore, the incident report in the record before us does contain a notation dated March 14, 2007, and the signed initials of Ms. Pitre. The record reflects that Ms. Pitre is an employee of the Department and that she approved the penalty of loss of good time in this matter. Thus, the disciplinary penalty of loss of 30 days of good time was imposed by the Department.

Accordingly, the September 17, 2008 judgment of the district court is hereby affirmed in accordance with Uniform Court of Appeal Rules 2-16.2(A)(4), (5), (6), and (8). All costs of this appeal are assessed to the plaintiff/appellant, Charles N. Simon, Jr.

AFFIRMED.