

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1097

CHRISTOPHER THOMAS

VERSUS

**JAMES M. LEBLANC, SECRETARY OF THE DEPARTMENT OF
PUBLIC SAFETY & CORRECTIONS AND ROBERT C. TANNER,
WARDEN, RAYBURN CORRECTIONAL CENTER**

Judgment Rendered: December 21, 2011

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 587,301**

The Honorable Kay Bates, Judge Presiding

**Christopher Thomas
Angie, LA**

**Plaintiff/Appellant,
In Proper Person**

**Debra A. Rutledge
Baton Rouge, LA**

**Counsel for Defendant/Appellee,
James M. LeBlanc**

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

WHIPPLE, J.

This matter is before us on appeal by plaintiff, Christopher Thomas, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the Department”), housed at Rayburn Correctional Center in Angie, Louisiana, from a judgment of the district court dismissing plaintiff’s petition for judicial review of a final administrative decision rendered in a Disciplinary Board (“the Board”) appeal. For the following reasons, we affirm.

DISCUSSION

Pursuant to an August 27, 2009 disciplinary report by Sgt. Andria Holloway regarding an incident she witnessed on that day, plaintiff was charged with violating Rule Number 21E, “Aggravated Sex Offenses-Obscenity” of the Rules and Procedures for Adult Inmates. Following a hearing, plaintiff eventually was found to have violated the rule, resulting in a custody change to maximum custody and the forfeiture of ninety days goodtime credit.

On September 8, 2009, plaintiff requested that the Board have the reporting officer take a polygraph examination. On September 11, 2009, the Department responded, advising him that “Department Regulation does not provide for offenders to request polygraph examinations.” Plaintiff then appealed the decision by the Board and the Warden.

On December 10, 2009, the Department denied his appeal, agreeing with the decision of the Disciplinary Board and the Warden. Specifically, the Secretary of the Department determined that the disciplinary report was clear and precise and provided convincing evidence of the violation as charged; that plaintiff’s only defense was denying the contents of the report; and that the officer’s eyewitness account of the incident provided sufficient evidence for the finding of guilt. The Secretary further noted that, “The offender was provided

with a full hearing and was afforded due process in both the hearing and the sentencing phases of the proceeding.”

Thereafter, plaintiff filed a petition for judicial review in the Nineteenth Judicial District Court on February 8, 2010, contending that his due process rights were violated because he “was refused the right to provide substantial material evidence in behalf of his only defense to refute the charge” and that the Department erred in failing to consider the fact that he has no history of prior sexual misconduct. After reviewing the ARP record and considering plaintiff’s arguments, the Commissioner issued a Recommendation, finding that:¹

[Even] if polygraph equipment is available at the petitioner’s institution, it would be somewhat of a burden on the defendants to conduct polygraph exam on employees who report disciplinary violations. This Commissioner also notes that the audio recording of the disciplinary hearing does not indicate the petitioner requested that the reporting officer be made available as a witness at his hearing or that he be allowed to cross-examine the reporting officer. It should also be noted that the petitioner did not request that he be allowed to set up a polygraph exam with an operator from outside his institution, but requested that the Department conduct the polygraph exam, at his expense. As noted by defense counsel at oral argument, the results of a polygraph exam would not be of great probative value in a disciplinary proceeding. In this particular matter, after consideration of the burden on the defendants and that the petitioner had an opportunity to request that he be allowed to cross-examine the reporting officer at his disciplinary hearing, this Commissioner finds that the petitioner’s due process rights were not prejudiced by the defendants’ denial of his request to conduct a polygraph examination of the reporting officer.

Plaintiff filed a traversal of the Commissioner’s Recommendation, which was considered by the district court along with the Commissioner’s Recommendation. On February 22, 2011, the district court rendered judgment in accordance with the Commissioner’s Recommendation. Plaintiff then filed the instant appeal, contending that the district court erred in denying his petition for

¹We note that the Commissioner’s Recommendation incorrectly identifies plaintiff’s Disciplinary Board Appeal as No. RCC-2009-317. The record reflects that the matter at issue is actually Disciplinary Board Appeal No. RCC-2009-319.

judicial review and in denying him due process. In particular, he contends the district court's decision to affirm the denial of his disciplinary appeal and the denial of his request for a polygraph examination resulted in the deprivation of an existing liberty interest and was a "Substantial Right" violation.

On review, we note that the record fully supports the dismissal of the petition for judicial review for the reasons noted in the Recommendation issued by the Commissioner, which we adopt herein as "Exhibit A" and incorporate as part of this opinion. In sum, as recognized by the Commissioner, the results of a polygraph exam would be of no great probative value in a disciplinary proceeding. Moreover, plaintiff had the opportunity to request that he be allowed to cross-examine the reporting officer at the disciplinary hearing, but failed to do so.

Thus, after a thorough review of the record herein and relevant jurisprudence, we find no error in the February 22, 2011 judgment of the district court, which we hereby affirm. Costs of this appeal are assessed against the plaintiff/appellant, Christopher Thomas.

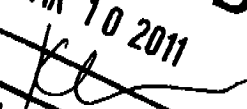
AFFIRMED.

CHRISTOPHER THOMAS

- * NO. 587-301 SECTION: 26
- * 19TH JUDICIAL DISTRICT COURT
- * PARISH OF EAST BATON ROUGE
- * STATE OF LOUISIANA

vs.

LOUISIANA STATE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL

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COMMISSIONER'S RECOMMENDATION

The petitioner filed the instant request for judicial review of the final administrative decision rendered under Disciplinary Board Appeal No. RCC-2009-317. The disciplinary record filed as a response in this matter indicates the petitioner was convicted of a violation of Rule 312(E)- Aggravated Sex Offense. The sanctions imposed by the disciplinary board were a custody change and a loss of 90 days good time credits. The petitioner contends his due process rights were prejudiced when his disciplinary board denied his request for the reporting officer to take a polygraph test at the petitioner's expense.

At the hearing conducted before this Commissioner the petitioner made a request to subpoena witnesses and present testimony. The petitioner's request for heard as a motion to expand the administrative record and was denied by this Commissioner based on the finding the petitioner should have made his request to call witnesses and request to produce a log book at his disciplinary board hearing, rather than at this stage of the review process. This Commissioner also found that Major Harwell's testimony would not be relevant to the issues raised in this request for judicial review. A transcript of the hearing conducted before this Commissioner has been prepared and is included in this record for the Court's review.

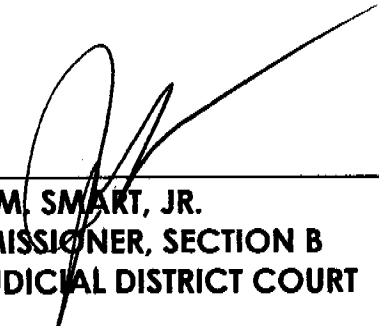
The audio recording of the petitioner's disciplinary hearing indicates the petitioner's inmate counsel argued at his disciplinary hearing that the only

means for the petitioner to challenge the reporting officer's account of the disciplinary incident was to subject the reporting officer to a polygraph exam. The disciplinary record indicates that the petitioner requested that the Department conduct the polygraph exam with equipment available at his institution and that he was willing to reimburse the Department for the cost of the polygraph examination. The record indicates the petitioner's request was denied based on the stated finding that the rules and regulations of the Department do not provide for polygraph exams in disciplinary matters.

This Commissioner notes that, even if polygraph equipment is available at the petitioner's institution, it would be somewhat of a burden on the defendants to conduct polygraph exam on employees who report disciplinary violations. This Commissioner also notes that the audio recording of the disciplinary hearing does not indicate the petitioner requested that the reporting officer be made available as a witness at his hearing or that he be allowed to cross-examine the reporting officer. It should also be noted that the petitioner did not request that he be allowed to set up a polygraph exam with an operator from outside his institution, but requested that the Department conduct the polygraph exam, at his expense. As noted by defense counsel at oral argument, the results of a polygraph exam would not be of great probative value in a disciplinary proceeding. In this particular matter, after consideration of the burden on the defendants and that the petitioner had an opportunity to request that he be allowed to cross-examine the reporting officer at his disciplinary hearing, this Commissioner finds that the petitioner's due process rights were not prejudiced by the defendants' denial of his request to conduct a polygraph examination of the reporting officer.

It is the recommendation of this Commissioner that the denial of the petitioner's disciplinary appeal be affirmed and this request for judicial review be dismissed with prejudice, at the petitioner's cost.

Respectfully recommended this 31 day of Jan.
2011.



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

FILED

JAN 31 2011

Brenda Saik
DY. CLERK OF COURT

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF
THE WRITTEN REASONS / JUDGMENT /
ORDER COMMISSIONER'S RECOMMENDATION WAS
MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED TO:
ALL PARTIES NOTIFIED
DONE AND SIGNED ON 1/31/11
Brenda Saik
DEPUTY CLERK OF COURT