

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 2174

CLARENCE BUCKLEY

VERSUS

PAROLE BOARD AND RICHARD STALDER, SECRETARY, DEPARTMENT
OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: JUN 20 2012

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 556,040

Honorable Janice Clark, Presiding

Clarence Buckley
St. Gabriel, LA

Plaintiff/Appellant
Pro Se

Wendell C. Woods
Baton Rouge, LA

Counsel for Defendant/Appellee
Louisiana State Parole Board

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Baton Rouge, LA

Counsel for Defendant/Appellee
James M. LeBlanc

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Spitz
[Signature]
VGW by Amy

GUIDRY, J.

Petitioner, Clarence Buckley, an inmate in the custody of the Louisiana Department of Public Safety and Corrections at Elayn Hunt Correctional Center (Department), appeals from a judgment of the district court dismissing his suit with prejudice. For the reasons that follow, we affirm.

Petitioner, who was serving a thirty-three year armed robbery sentence as a habitual offender, was released on October 13, 1992, by the Parole Board on supervision with a full-term date of March 14, 2013. Thereafter, petitioner appeared at a parole interview in an intoxicated condition and tested positive for cocaine and alcohol use. After finding petitioner violated the conditions of his parole, the Parole Board revoked petitioner's parole on December 8, 1999, and he was returned to custody. Petitioner's full-term date was subsequently changed to February 15, 2020.

Petitioner instituted a complaint in the prison's Administrative Remedy Procedure (ARP), stating that the Department erroneously released him on parole in 1992 when his sentence was not eligible for parole, and requesting that the Department award him credit for the seven years he remained at liberty while on parole supervision. In ARP HDQ-2008-0644 and EHCC-2008-322, the Department denied petitioner's request for relief. Specifically, the Department noted that between 1984 and August 14, 1999, it followed State v. Jackson, 452 So. 2d 682 (La. 1984), which affirmed the Department's policy of giving parole eligibility dates when the judge is silent as to parole ineligibility, in spite of specific statutory requirements in the penalty clause of the Louisiana Criminal Code. Therefore, petitioner was given a parole eligibility date of March 10, 1991, and was thereafter released on parole October 13, 1992, with a full term date of March 14, 2013. Because petitioner's parole was subsequently revoked on

December 8, 1999, the Department asserted that he was not entitled to any credit for time at liberty while released on parole supervision. See La. R.S. 15:574.9(E).

Thereafter, petitioner filed a petition for judicial review with the Nineteenth Judicial District Court, asserting that under the doctrine of credit for time served at liberty, as acknowledged in Jackson v. Stalder, 99-2240 (La. App. 1st Cir. 11/3/00), 772 So. 2d 380, writ denied, 00-3494 (La. 10/12/01), 799 So. 2d 496, he is entitled to be credited with the seven years he served while erroneously released on parole. Following a hearing, the commissioner for the district court issued a recommendation, finding that the doctrine of credit for time at liberty is not applicable in the instant matter. The commissioner noted this is not a situation where an error regarding a release was discovered and the petitioner was returned to custody by authorities when the error was discovered. Rather, in petitioner's case, he was released on parole supervision by the Parole Board with a full-term date for petitioner to satisfy his sentence. Petitioner could have remained out of the physical custody of the Department and completed his sentence by abiding by the agreed-upon conditions of parole. The commissioner noted that it was the petitioner's conduct, use of cocaine and alcohol, that resulted in his return to physical custody and delayed the completion of his sentence. Accordingly, the commissioner found that petitioner was not entitled to credit for time at liberty. The commissioner recommended that the Department's decisions denying petitioner's request for additional time credits on his sentence be affirmed, and that petitioner's request for judicial review be dismissed with prejudice.

Thereafter, the district court signed a judgment on November 17, 2008, affirming the Department's decisions and dismissing petitioner's request for judicial review with prejudice. Petitioner now appeals from this judgment.

From our review of the record, we find no error in the judgment of the district court. See also White v. Pearlman, 42 F. 2d 788, 789 (10th Cir. 1930)

(finding where a prisoner is discharged from a penal institution, without any contributing fault on his part, and *without violation of conditions of parole*, his sentence continues to run while he is at liberty). Accordingly, we issue this summary opinion in accordance with Uniform Rules-Courts of Appeal 2-16.2(A)(5)-(8), affirming the judgment of the district court. All costs of this appeal are assessed to Clarence Buckley.

AFFIRMED.