

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

FW
WFW

NUMBER 2009 CA 2017

CLEVELAND FERGUSON

VERSUS

N. BURL CAIN, WARDEN

Judgment Rendered: May 7, 2010

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 566,598

Honorable William Morvant, Judge

Cleveland Ferguson
Angola, LA

In Proper Person
Plaintiff – Appellant

Terri L. Cannon
Baton Rouge, LA

Attorney for
Defendant – Appellee
Secretary for the Dept. of
Public Safety & Corrections

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

Hughes, J. concurs.

WELCH, J.

Appellant, Cleveland Ferguson, an inmate in the custody of the Louisiana Department of Safety and Corrections (DPSC), appeals a judgment of the district court dismissing, with prejudice, his application for judicial review of DPSC's rejection of his request for administrative relief. We affirm.

On March 18, 2008, Ferguson initiated a prison administrative remedy procedure (ARP) complaint seeking to have the prison's warden review his continued confinement in extended lockdown. Ferguson stated that his action was not a disciplinary appeal; rather, he was seeking to demonstrate that he had been discriminated against by the Annual Review Board and that his confinement constituted cruel and unusual punishment. Ferguson charged that he had been before the Annual Review Board every 90 days since 2003, and each time, he had been discriminated against by the board because other inmates with the same rule violation had been released. He noted that in 2007, he was sentenced to extended lockdown for having an ink pen with a piece of metal in its tip in his cell. Ferguson asked the warden to review his conduct record to determine whether he should be sent back to extended lockdown or to the working cell block.

On April 2, 2008, the warden's designee, Trish Foster, rejected Ferguson's request on the basis that it involved a disciplinary matter. On May 1, 2008, Ferguson filed this petition for judicial review, asserting that the warden erred in rejecting his ARP complaint. The Commissioner ordered that the lawsuit be served on DPSC, which admitted in its answer that Ferguson had exhausted the available administrative procedures with respect to the issues raised in his complaint.

After examining the administrative record, the Commissioner concluded that DPSC based its rejection decision on an invalid ground in that Ferguson's complaint did not involve a disciplinary matter, as Ferguson plainly stated in his

request, but was a complaint about the decisions rendered by the lockdown review board. The Commissioner concluded that DPSC based the rejection decision on invalid grounds, warranting reversal of its decision, but concluded that a remand would be improper because DPSC should have rejected the initial complaint for raising an issue that could not be appealed through the administrative procedure. The Commissioner observed that Louisiana Administrative Code Title 22, Pt. I, § 325 (C) and (F) require a screening officer to reject any ARP complaint regarding a lockdown review board decision, unless the inmate alleges that the board gave no reasons for a decision or failed to conduct a review every 90 days. The Commissioner noted that Ferguson did not allege that he did not receive reviews every 90 days or that no reasons were given for the lockdown review board's decision. Accordingly, the Commissioner recommended that the court reverse DPSC's decision and dismiss Ferguson's petition for judicial review with prejudice on the basis that Ferguson is entitled to no relief. The district court entered judgment in accordance with the Commissioner's recommendation and dismissed Ferguson's request for judicial review with prejudice at Ferguson's cost.

After a thorough review of the entire record of these proceedings, we find no error in the judgment of the district court and affirm the district court's judgment in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1(B). All costs of this appeal are assessed to appellant, Cleveland Ferguson.

AFFIRMED.