

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 2072

DARRYL J. PARKER

VERSUS

LOUISIANA DEPARTMENT OF CORRECTIONS

Judgment Rendered: May 7, 2010

Appealed from the

Nineteenth Judicial District Court

In and for the Parish of East Baton Rouge, Louisiana

Docket Number 575,285, Division 27

Honorable Todd Hernandez, Judge Presiding

**Darryl J. Parker
Jackson, LA**

Plaintiff/Appellant Pro Se

**William L. Kline
Baton Rouge, LA**

**Attorney for Defendant/Appellee,
Louisiana Department of Public
Safety and Corrections**

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WJM

(P)

JEW by (P)

WHIPPLE, J.

In this appeal, plaintiff, Darryl J. Parker, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the DPSC), challenges the district court's dismissal without prejudice of his Petition for Writ of Habeas Corpus for failure to state a cause of action and for lack of subject matter jurisdiction due to failure to exhaust administrative remedies. For the following reasons, we affirm.

PROCEDURAL HISTORY

On February 11, 2009, Parker filed a petition, seeking a writ of habeas corpus on the basis that the DPSC had erroneously determined that he was ineligible for "good time" credits and that he should be declared eligible. Accordingly, Parker averred, upon being given credit for good time, he was entitled to immediate release.¹

Pursuant to the requirements of LSA-R.S. 15:1178 and LSA-R.S. 15:1188, Parker's petition was screened prior to the DPSC being served with a copy of the pleading, and the Commissioner issued a screening report.² In her screening report, the Commissioner concluded that Parker's complaint was in essence a time computation/release date issue governed by the Corrections Administrative Remedy Procedure (CARP), LSA-R.S. 15:1171 et seq. The Commissioner recommended that Parker's petition be dismissed without prejudice on two bases. First, the Commissioner concluded that

¹Parker further sought damages for each day he allegedly had been deprived of the right to good time.

²Louisiana Revised Statute 15:1178 mandates a "judicial screening" procedure by the district court to determine if the petition states a cognizable claim or if the petition, on its face, is frivolous or malicious, or fails to state a cause of action. This screening is performed prior to service of the petition on defendants. Additionally, pursuant to LSA-R.S. 15:1188, a provision of the Prisoner's Litigation Reform Act, the court may screen the case before docketing to identify "cognizable claims" and may dismiss the petition for the failure "to state a claim upon which relief can be granted" in addition to those remedies listed in LSA-R.S. 15:1178. Frederick v. Ieyoub, 99-0616 (La. App. 1st Cir. 5/12/00), 762 So. 2d 144, 147, writ denied, 2000-1811 (La. 4/12/01), 789 So. 2d 581.

Parker had failed to state a cause of action for habeas relief. Secondly, because Parker had not exhausted his administrative remedies, the Commissioner further concluded that the district court lacked subject matter jurisdiction to review the claim pursuant to CARP.

By judgment dated April 14, 2009, the district court, in accordance with the screening recommendation, dismissed Parker's petition without prejudice for failure to state a cause of action for habeas relief and for lack of subject matter jurisdiction.³ From this judgment, Parker appeals. However, Parker does not set forth any assignments of error in his appellate brief, but, rather, simply restates the merits of the argument he presented to the district court.

DISCUSSION

While Parker's petition is styled as a petition for writ of habeas corpus, the complaint set forth therein raises issues of time computation, which claims must be pursued initially through CARP. CARP is currently the exclusive remedy by which an offender may challenge the DPSC's time computations relative to good time, even where an inmate incorrectly labels his or her claim a writ of habeas corpus. LSA-R.S. 15:1171(B); Ferrington v. Louisiana Board of Parole, 2003-2093 (La. App. 1st Cir. 6/25/04), 886 So. 2d 455, 457, writ denied, 2004-2555 (La. 6/24/05), 904 So. 2d 741.

Pursuant to LSA-R.S. 15:1176, no state court shall entertain an inmate's grievance or complaint which falls under the purview of CARP

³We note that the caption of the judgment contains a typographical error in that it lists plaintiff as "Darryl Porter" rather than "Darryl Parker." Accordingly, we will amend the judgment for the limited purpose of correcting this typographical error in the caption. See LSA-C.C.P. art. 2164; see also Arrow Fence Company, Inc. v. DeFrancesch, 466 So. 2d 631, 633 (La. App. 5th Cir), writ denied, 468 So. 2d 575 (La. 1985).

unless and until the inmate has exhausted available administrative remedies. Therefore, where an inmate fails to exhaust available administrative remedies, the district court and the appellate court lack subject matter jurisdiction to review the claim. See Hull v. Stalder, 2000-2730 (La. App. 1st Cir. 2/15/02), 808 So. 2d 829, 831, 833. Moreover, because Parker's habeas claim is predicated on his good time eligibility claim, he states no claim for immediate release because the triggering event—good time eligibility and actual accrual of good time—has not occurred. See Ferrington, 886 So. 2d at 457-458.

Accordingly, after a thorough review of the entire record of these proceedings, we find no error in the judgment of the district court, dismissing without prejudice Parker's claims.⁴

CONCLUSION

For the above and foregoing reasons, the caption of the April 14, 2009 judgment of the district court dismissing Parker's petition without prejudice

⁴In Reed v. Stalder, 2004-0727 (La. App. 1st Cir. 5/6/05) (unpublished), the plaintiff filed a petition for habeas corpus in which she claimed that the DPSC had arbitrarily and erroneously denied her good time credits. Pursuant to the screening requirements set forth in LSA-R.S. 15:1178 and 15:1188, the Commissioner concluded that the plaintiff's complaint was in essence a time computation governed by CARP. The Commissioner concluded that because the plaintiff failed to submit her claim through CARP prior to instituting suit in district court, the district court lacked subject matter jurisdiction. On appeal, this court vacated the judgment of the district court and remanded to allow the plaintiff the opportunity to amend her petition to state that she had exhausted her administrative remedies. This court's reason for doing so was predicated on the fact that in the plaintiff's traversal to the Commissioner's recommendation, she stated that she had exhausted her administrative remedies and specifically requested the opportunity to amend her petition to comply with the technical requirements of LSA-R.S. 15:1176.

Thus, Reed is distinguishable from the case presently before us. The record in the instant case contains no traversal filed by Parker. Moreover, to the extent that the notice of appeal could be read to contain an assertion that he exhausted his administrative remedies (although not entirely clear in that hand-written document), Parker makes no such assertion in his appellate brief, nor has he specifically requested the opportunity to amend his petition to assert that he exhausted those remedies. Therefore, in light of Parker's unsubstantiated claim (if such a claim was even asserted) that he has exhausted administrative remedies and the absence of any request by him for an opportunity to amend his petition, we find no abuse of discretion by the district court in not affording Parker an opportunity to amend his petition to assert that he has exhausted his administrative remedies. See Harrell v. Department of Public Safety and Corrections, 2009-1421 (La. App. 1st Cir. 2/12/10) (unpublished).

is amended to change the name of plaintiff in the caption from “Darryl Porter” to “Darryl Parker.” In all other respects, the judgment is affirmed. Costs of this appeal are assessed against Darryl Parker.

AMENDED, AND AS AMENDED, AFFIRMED.