

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 1290

DAVID D. CLIFFORD, A/K/A MICHAEL J. COLEMAN

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: December 23, 2008

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On Appeal from the Nineteenth Judicial District Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No. 550,129

Honorable Curtis A. Calloway, Judge Presiding

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David D. Clifford
Angola, Louisiana

Plaintiff/Appellant
In Proper Person

Debra A. Rutledge
Baton Rouge, Louisiana

Counsel for Defendants/Appellees
Louisiana Department of Public
Safety and Corrections and Richard L.
Stalder

* * * * *

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

DMC
A/K/A
Jaw

McCLENDON, J.

Plaintiff, David D. Clifford, appeals the district court's judgment affirming the denial of his request for "good time credits for time spent in federal custody." After a thorough review of the record, we affirm.

Plaintiff sought judicial review of the denial of his request for additional "credits" by the defendants, Louisiana Department of Public Safety and Corrections and Richard L. Stalder (department). After considering the issues raised in plaintiff's petition for review,¹ the commissioner for the 19th Judicial District Court issued a report recommending an affirmance of the department's decision and a dismissal of the appeal. On March 20, 2008, the district court signed a judgment affirming the department's decision and dismissing the plaintiff's appeal to the district court. Plaintiff appealed to this court.

Plaintiff asserts that the criminal court in Orleans Parish ordered that his state sentence was to be served concurrently with any other sentence, including a federal sentence. Therefore, the department and the district court erred in failing to award a credit for his concurrent state and federal sentences.

Based on the record before us, we find no clear error in the factual findings and agree with the analysis and conclusion of the commissioner and the judgment of the court below. The key concept here is "service" of, or actually serving, a sentence concurrently with another. LSA-C.Cr.P. art. 883.1A. As stated in the commissioner's report:

At the time [plaintiff] was sentenced on the State charges, he was not then serving any sentence for the federal government because he had escaped from federal custody and sentence. The record shows that his federal sentence did not commence to run again until his release from State custody (for good time parole) on September 27, 1994. [Louisiana Code Criminal Procedure] Article 883.1 . . . [,] relied upon by [plaintiff,] does, in fact, state that a state court may specify that a state sentence be served concurrently with a federal sentence--as [plaintiff's] armed robbery sentence would have been served if he was then serving "any other sentence" including the federal sentence. Specifically, Art. 883.1 states that credit shall be given on the state sentence for all "service of

¹ Long after filing a petition for judicial review, plaintiff raised new issues in a brief directed to the 19th JDC. The district court found that the new allegations were not before the court and did not rule on them. Likewise, in his brief to this court, the plaintiff assigned error to issues that were not raised in his administrative remedy requests to the department or to the district court in his petition for review. We also decline to address any new issues.

concurrent terms of imprisonment" served in federal custody. (footnotes omitted)

After applying the cited law to the undisputed essential facts,² the commissioner then found that on the date of sentencing in state court, the plaintiff was not in federal custody and was not serving a federal sentence; rather, "he was on escape status from federal custody, and thus, not serving *'any other sentence'* when he was arrested and sentenced" on the state charges. Similarly, the commissioner found that, due to his subsequent "good time" release from his state sentence, the plaintiff was not serving a concurrent state sentence at the time his federal sentence resumed.

For these reasons, we affirm the judgment by this memorandum opinion issued in compliance with URCA Rule 2-16.1B. The costs are assessed to the plaintiff-appellant, David D. Clifford.

AFFIRMED.

² On appeal, plaintiff filed in this court a "SUBPOENA DUCES TECUM," which was directed to the Orleans Parish Civil District Court, requesting supplementation of the record with a transcript from the Orleans Parish Court. Initially, we note that such a motion is more properly directed to the district court and we deny the request filed in this court. However, we also find that, even if we assume the language relied on by plaintiff from the transcript is correct, the result would be the same.