

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1956

DAVID HAMILTON

VERSUS

DEPARTMENT OF CORRECTIONS; VENETIA MICHAELS (WARDEN)

Judgment Rendered: June 11, 2010

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 559,594

Honorable Todd Hernandez, Judge

* * * * *

David Hamilton
Keithville, LA

In Proper Person
Plaintiff-Appellant

Susan Wall Griffin
Baton Rouge, LA

Counsel for
Defendant-Appellee
Louisiana Department
of Public Safety and
Corrections

* * * * *

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

GUIDRY, J.

David Hamilton, an inmate in the custody of the Department of Public Safety and Corrections (DPSC) and housed at the Forcht Wade Correctional Center in Keithville, Louisiana, filed an administrative remedy procedures (ARP) request pursuant to the Corrections Administrative Remedies Procedures Act, La. R.S. 15:1177-1184, contesting his classification as an habitual offender and the resulting ineligibility to earn "good time credits" for diminution of his sentence. After exhausting the administrative remedies provided, Hamilton sought review of the denial of his ARP in the Nineteenth Judicial District Court. Based on the limited evidence presented by Hamilton in support of his petition for judicial review, a commissioner assigned by the district court to review the matter recommended that Hamilton's petition for judicial review be dismissed because the record before the commissioner contained some evidence that supported the DPSC's denial of Hamilton's ARP request. The commissioner further recommended that Hamilton's petition be dismissed without prejudice in order to allow him an opportunity to provide the DPSC with "the necessary documentation to support his contention that his Habitual Offender adjudication was entirely reversed and vacated." The district court rendered judgment in conformity with the recommendation of the commissioner, which Hamilton now appeals.

Judicial review of the decision of the DPSC is provided for in La. R.S. 15:1177. Paragraph (5) of Subsection (A) of that statute confines the district court's review to the record and limits it to the issues presented in the petition for review and the administrative remedy request filed at the agency level. McDowell v. Taylor, 99-1587, p. 4 (La. App. 1st Cir. 6/23/00), 762 So. 2d 1149, 1151. The district court may affirm the decision of the agency, remand the case for further proceedings, or order that additional evidence be taken. La. R.S. 15:1177(A)(8). The court may reverse or modify the administrative decision only if substantial

rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (6) manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. La. R.S. 15:1177(A)(9).

On review of the district court's judgment under La. R.S. 15:1177, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. Williams v. Creed, 07-0614, p. 4 (La. App. 1st Cir. 12/21/07), 978 So. 2d 419, 422, writ denied, 08-0433 (La. 10/2/09), 18 So. 3d 111. On reviewing the applicable law, we find no error in the district court's judgment.

In 1984, a jury found Hamilton guilty of the crimes of aggravated burglary and aggravated battery. Following his conviction on the aggravated crimes, Hamilton was subsequently adjudicated a third felony habitual offender and sentenced to consecutive terms of imprisonment of 45 years and 10 years on the aggravated burglary and aggravated battery counts, respectively. Hamilton twice appealed his sentences and was granted some relief on appeal, wherein lies the problem with resolution of Hamilton's ARP request. A copy of the opinion from Hamilton's second appeal, wherein the Second Circuit Court of Appeal found that the trial court erred in adjudicating Hamilton a third felony habitual offender and remanded his case for resentencing, is not contained in the administrative record. The only indication of what the second circuit decreed regarding Hamilton's habitual offender adjudication comes from the record of the proceedings in the trial court after Hamilton's case was remanded for resentencing.

Hamilton contends that those proceedings indicate that his adjudication as a habitual offender, and not just as a third felony habitual offender, was vacated, and as he has not been re-adjudicated as a habitual offender, he is entitled to accrue good time credits in diminution of his sentence.¹ The DPSC, on the other hand, contends that the proceedings indicate that Hamilton's third felony habitual offender adjudication was not simply vacated and reversed, but rather it was reduced to an adjudication of a second felony habitual offender. As observed by the district court commissioner, the record does support this interpretation of Hamilton's resentencing proceedings.²

Moreover, as shown in the procedural history of the case of State v. Kennerson, 96-1518 (La. App. 3d Cir. 5/7/97), 695 So. 2d 1367, such a ruling is not out of line with Louisiana jurisprudence. Similar to the matter before us, in Kennerson, the appellate court found that the trial court had erred in adjudicating the defendant a third felony habitual offender, observing that the defendant, "at most, was proven to be a second habitual offender, and should be resentenced as such. Of course, the state would have the option of once again attempting to prove that the defendant is a third habitual offender, as double jeopardy does not apply to habitual offender adjudications." Kennerson, 96-1518 at 18-19, 695 So. 2d at 1379.

On remand, the defendant was again adjudicated a third felony habitual offender, using the same evidence that the appellate court had previously declared insufficient to support such adjudication. Thus, the appellate court again vacated and reversed the defendant's adjudication and sentence as a third felony habitual

¹ See La. R.S. 15:571.3(C), which excludes inmates from earning diminution of their sentence when (1) the inmate is convicted of certain crimes, such as aggravated battery and aggravated burglary, (2) the inmate is adjudicated a habitual offender, and (3) the inmate's last conviction was for a crime committed after September 10, 1977.

² We further observe that in his brief to this court, Hamilton states "[o]n June 18, 1992 relator's third offender status was vacated and *reduced* to a second felony offender status." (Emphasis added.)

offender and remanded the case to the trial court for "proper proceedings." State v. Kennerson, 97-391, p. 11 (La. App. 3d Cir. 10/8/97), 702 So. 2d 860, 865, writ denied, 97-2850 (La. 3/27/98), 716 So. 2d 884. Finally, in a third appeal after the second remand for resentencing, wherein the state did not attempt to retry the defendant as a third felony habitual offender, the defendant "alleged that the trial court erred in sentencing him as a second habitual offender without conducting a hearing." State v. Kennerson, 01-1088, p. 9 (La. App. 3d Cir. 2/6/02), 817 So. 2d 110, 116. The appellate court responded as follows:

Addressing this allegation, this court found another habitual offender hearing was not necessary because in the original appeal, Kennerson, 695 So.2d 1367 this court found the Defendant had been proven to be a second habitual offender. State v. Kennerson, 97-1682 (La. App. 3 Cir. 6/3/98); 715 So.2d 518.

As stated earlier, in the appeals related to the present case, Kennerson, 702 So.2d 867; and 702 So.2d 860, this court adopted the conclusions reached by the court in Kennerson, 695 So.2d 1367, regarding the habitual offender adjudication. By this adoption, the court in the appeals preceding the present case also found the Defendant was proven to be a second habitual offender and should be resentenced as such. Accordingly, the trial court in the present case did not err in stating the Defendant was a second habitual offender without conducting another hearing.

Kennerson, 01-1088 at 9-10, 817 So. 2d at 116.

Thus, based on this jurisprudence and evidence contained in the record that would support a finding that the second circuit effectively reduced the status of Hamilton's habitual offender adjudication from a third felony to a second felony, we affirm the judgment of the district court. Costs of this appeal are assessed to the appellant, David Hamilton.

AFFIRMED.