

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL


FIRST CIRCUIT

2010 CA 0986

DAVID JACOBSON

VERSUS

**STATE OF LOUISIANA, JAMES LEBLANC, LOUISIANA DEPARTMENT
OF PUBLIC SAFETY AND CORRECTIONS**

RHO
Jmy


**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 587,691, Section 22
Honorable Timothy E. Kelley, Judge Presiding**

**David Jacobson
DeQuincy, LA**

**Plaintiff-Appellant
In Proper Person**

**William Kline
Linda Ramsey
Baton Rouge, LA**

**Attorneys for
Defendant-Appellee
Louisiana Department of
Public Safety & Corrections**

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Judgment rendered December 22, 2010

PARRO, J.

David Jacobson, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment of the district court that dismissed his petition for judicial review,¹ without prejudice and without service on the DPSC. Based on our review of the record, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

During the period of time relevant to this matter, Mr. Jacobson was initially housed in the Orleans Parish Prison and was allegedly subjected to unpleasant and dangerous conditions. According to Mr. Jacobson's petition for judicial review in this matter,² the Orleans Parish Prison was severely overcrowded, the cells were filthy and had peeling paint, the toilets were constantly clogged and overflowing, and the prison was poorly ventilated. Because of these conditions, the inmates were allegedly exposed to various diseases; however, according to Mr. Jacobson's petition, the prison personnel denied the inmates certain medical care. Mr. Jacobson further contended that there was little, if any, recreation time granted to the inmates, no tennis shoes were provided for this limited recreation time, there were no rehabilitation programs or religious services, and there was no law library. The petition also alleged that the Orleans Parish Prison served the inmates cold meals, had insufficient cleaning supplies, and provided only limited clothing to the inmates.³

¹ Although Mr. Jacobson's petition was not characterized as a "petition for judicial review," his petition requested the district court to review his claims for injunctive and declaratory relief allegedly submitted to DPSC. Accordingly, we refer to his petition as one for judicial review.

² In addition to filing the petition for judicial review on his own behalf, Mr. Jacobson attempted to file the petition on behalf of all convicted defendants in the Orleans Parish Prison. It does not appear that Mr. Jacobson attempted to file any grievance pursuant to the Corrections Administrative Remedy Procedure on behalf of these other inmates, nor is there any evidence in the record that the other inmates filed grievances of their own; rather, Mr. Jacobson simply named these additional plaintiffs in the petition for judicial review filed in the district court. As a preliminary matter, since the jurisdiction of the district court is limited to appellate review in these matters, the claims of the other inmates are not properly raised in the petition for judicial review because they were never raised in a grievance. Furthermore, the actions of more than one prisoner may not be cumulated, and a prison suit filed or prosecuted *pro se* may not assert a class action. If a suit names more than one plaintiff or asserts a *pro se* class action, the actions of any plaintiff, other than the first-named plaintiff, shall be dismissed without prejudice. LSA-R.S. 15:1184(G). The commissioner recommended such a dismissal, and the district court signed a judgment, dismissing Mr. Jacobson's petition and adopting the commissioner's reasons.

³ Mr. Jacobson acknowledges in his petition that he has filed a lawsuit with similar allegations concerning the conditions in the Orleans Parish Prison in the United States District Court for the Eastern District of Louisiana.

In his petition for judicial review, Mr. Jacobson claimed that his action was exempt from any requirements that he exhaust administrative remedies prior to filing the petition because he was not requesting monetary relief. Instead, Mr. Jacobson requested an immediate injunction prohibiting the defendants from housing him and the other inmates at the Orleans Parish Prison. Mr. Jacobson further requested that he and the other inmates be transferred from the Orleans Parish Prison to other facilities and that the court declare the housing of prisoners, under the conditions allegedly found at the Orleans Parish Prison, to be unconstitutional.

Although Mr. Jacobson was initially housed in the Orleans Parish Prison, he was eventually transferred to Elayn Hunt Correctional Center in October 2009, where he was allegedly denied access to the law library and was not given adequate writing materials. Therefore, Mr. Jacobson amended his petition for judicial review in an attempt to add these claims and to request that the officials at Elayn Hunt Correctional Center be ordered to grant him a minimum of thirty hours of physical access to the law library per week. Thereafter, Mr. Jacobson twice amended his petition for judicial review to restate his claims pertaining to the Orleans Parish Prison and to attempt to add claims pertaining to the facility in which he is currently housed, C. Paul Phelps Correctional Center.⁴

Pursuant to the screening requirements of LSA-R.S. 15:1178(B) and 15:1188(A), Mr. Jacobson's petition for judicial review was assigned to a commissioner at the district court to determine if the petition stated a cognizable claim, or if the petition, on its face, was frivolous or malicious, failed to state a cause of action, or sought monetary damages from a defendant who was immune from liability for such damages. After completing the screening review, the commissioner issued a report recommending dismissal, without prejudice, for lack of subject matter jurisdiction and/or because the petition for judicial review failed to state a cause of action for relief as to all defendants.

⁴ The petition for judicial review in this matter was not filed until February 2010. Mr. Jacobson had already been transferred out of the Orleans Parish Prison by October 2009, when he was transferred briefly to Elayn Hunt Correctional Center. In November 2009, Mr. Jacobson was transferred to his current facility, C. Paul Phelps Correctional Center.

After a *de novo* review of the record, the district court signed a screening judgment on April 6, 2010, adopting the written recommendation of the commissioner and dismissing the petition for judicial review, without prejudice and without service on the defendants, for lack of subject matter jurisdiction, and/or for failure to state a cause of action, and/or for filing the petition in the wrong venue. It is from this judgment that Mr. Jacobson has appealed.⁵

DISCUSSION

In her report, the commissioner noted that the jurisdiction of the district court over complaints subject to the Corrections Administrative Remedy Procedure (CARP) is appellate review only. Mr. Jacobson alleged in his petition for review that he was not required to exhaust his administrative remedies because his petition sought only injunctive and declaratory relief rather than monetary damages; however, LSA-R.S. 15:1171(B) clearly provides that any and all claims seeking injunctive and declaratory relief are subject to the administrative remedies provided by CARP. Moreover, these administrative remedies are available to offenders for the purpose of preserving any cause of action they may claim to have against the DPSC or others. See LSA-R.S. 15:1172(A). Furthermore, it is only once those administrative remedies have been exhausted that an offender may proceed to file a petition in the district court. See LSA-R.S. 15:1176 and 15:1184(A)(2).

In this matter, there is no evidence that Mr. Jacobson has exhausted his administrative remedies. We note that there are numerous administrative remedy procedures (ARPs) in the record; however, they appear to address several different complaints from the three different facilities in which Mr. Jacobson has been housed. Furthermore, there is no final agency action in response to any ARP filed by Mr. Jacobson in the record. A review of the record demonstrates that there is a first-step response to Mr. Jacobson's grievance filed in Elayn Hunt Correctional Center and a first-

⁵ Although Mr. Jacobson purportedly filed this matter on behalf of himself and other inmates, nothing in the notice of appeal mentions that the appeal he filed was taken on behalf of the other inmates. He does make certain arguments on their behalf in his brief to this court; however, the notice of appeal is clearly only on behalf of Mr. Jacobson.

step response to Mr. Jacobson's grievance filed in C. Paul Phelps Correctional Center. However, although Mr. Jacobson noted on both first-step responses that he wished to proceed to the second step, no second-step response has been attached in either matter. Furthermore, there is no response whatsoever to the ARP filed by Mr. Jacobson in connection with the conditions at the Orleans Parish Prison while he was actually housed in that facility.⁶ Therefore, it appears that Mr. Jacobson has failed to exhaust his administrative remedies as required.

In addition, we note that Mr. Jacobson's original petition for judicial review sought review only of the ARP concerning the conditions at Orleans Parish Prison. However, through various amendments to the petition, Mr. Jacobson has attempted to seek judicial review of two other ARPs concerning issues at other facilities in which he has been housed. This court has previously determined that an inmate may not seek judicial review of more than one ARP in the same petition for judicial review. Lightfoot v. Stalder, 97-2626 (La. App. 1st Cir. 12/28/98), 727 So.2d 553, 554-55; see also McCoy v. Stalder, 99-1747 (La. App. 1st Cir. 9/22/00), 770 So.2d 447, 452. Accordingly, because the various petitions seek review of more than one ARP in the same proceeding, and because Mr. Jacobson has failed to demonstrate that he has exhausted his administrative remedies in any of those proceedings, we find no error in the district court's judgment dismissing the petition for judicial review.

We further note that Mr. Jacobson's original petition for judicial review attempted to state a cause of action for injunctive relief on behalf of himself and the other inmates who had been housed with him at the Orleans Parish Prison. Specifically, Mr. Jacobson requested that this court grant an injunction prohibiting the defendants from housing him and these other inmates in the Orleans Parish Prison. He also requested an injunction ordering the defendants to transfer him and the other inmates to other

⁶ Mr. Jacobson claims that the defendants ignored this ARP; however, it appears that Mr. Jacobson did not initiate the process properly. According to LAC 22:I.325(G)(1)(a), the inmate is to begin the ARP process by writing a letter, to the warden of the facility, in which he briefly sets out the basis for his claim and the relief sought. In this matter, Mr. Jacobson sent his ARP to the secretary/director of the DPSC, the office of the Attorney General, and possibly the criminal sheriff for Orleans Parish. There is no indication, however, that the ARP was ever sent to the warden of the Orleans Parish Prison. As such, it appears that the ARP was never lodged.

facilities. As discussed previously, Mr. Jacobson did not have the authority to request relief for the other inmates;⁷ however, with regard to his request for an injunction, Mr. Jacobson has failed to state a cause of action.

Generally, an injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant. See LSA-C.C.P. art. 3601. However, Mr. Jacobson did not allege any facts in his petition for judicial review that would support a claim that he was in danger of suffering irreparable injury, loss, or damage.⁸ See LSA-C.C.P. arts. 927, 931. Accordingly, we find no error in the district court's judgment dismissing Mr. Jacobson's suit for failure to state a cause of action for injunctive relief.

DECREE

After a thorough review of the record, we find no error in the judgment of the district court. Accordingly, we affirm the judgment of the district court. All costs of this appeal are assessed to the plaintiff, David Jacobson.

AFFIRMED.

⁷ Although Mr. Jacobson argues in his brief to this court that preventing the class from bringing its claims before the court is unconstitutional, there is nothing that prevents these other inmates from bringing their claims before the court individually once they have exhausted their administrative remedies.

⁸ Moreover, under the circumstances of this case, he would have been unable to demonstrate that he was in any such danger, because by the time his original petition for judicial review was filed, Mr. Jacobson was no longer housed in the Orleans Parish Prison or subjected to the conditions there.