

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1616

DEMOND MACK

VERSUS

**JAMES LEBLANC, SECRETARY, DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONS AND JERRY GOODWIN,
WARDEN, DAVID WADE CORRECTIONAL CENTER**



Judgment Rendered: March 25, 2011

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On Appeal from the 19th Judicial District Court
for the Parish of East Baton Rouge
State of Louisiana
Docket No. 575-969, Section 27

Honorable Todd Hernandez, Presiding

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Demond Mack
Homer, LA

Plaintiff/Appellant
In Proper Person

Susan Wall Griffin
Baton Rouge, LA

Counsel for Defendant/Appellee
James M. Leblanc

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

HUGHES, J.

This is an appeal of a judgment of the Nineteenth Judicial District Court (19th JDC) dismissing appellant's petition for judicial review. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Demond Mack is a prisoner in the custody of the Department of Public Safety and Corrections (the DPSC). On November 26, 2008, Mr. Mack was found guilty of a violation of Disciplinary Rule 10 (Fighting), and he was sentenced to 10 days of disciplinary detention and a loss of 180 days of good time.¹

Contending that the DPSC lacks the authority to forfeit more than 30 days good time per month for his offense pursuant to the restrictions imposed on it by LSA-R.S. 15:571.4(B), Mr. Mack instituted an action under the Corrections Administrative Remedy Procedure (CARP), LSA-R.S. 15:1171, *et seq.* When he was denied relief at both administrative steps, Mr. Mack filed a petition for judicial review of the DPSC's final decision. After the DPSC filed its answer, the commissioner of the 19th JDC issued a recommendation that the DPSC's decision be affirmed and the request for judicial review be dismissed with prejudice, at Mr. Mack's cost.² Subsequently, a judgment was signed by the 19th JDC adopting the recommendations of the commissioner, affirming the DPSC's decision, and dismissing Mr. Mack's petition with prejudice. Mr. Mack appeals.

LAW AND ANALYSIS

Judicial review of an adverse agency decision is available under the CARP, and is "confined to the record," as developed by the administrative proceedings. LSA-R.S. 15:1177(A)(5). A reviewing court may only reverse or modify an

¹ The administrative record also indicates that a previously suspended November 24, 2008 sentence was also imposed due to the instant guilty finding, resulting in his transfer to maximum-extended lockdown.

² The offices of the commissioner of the 19th JDC were created by LSA-R.S. 13:711. The commissioners hear and recommend the disposition of criminal and civil proceedings arising out of the incarceration of inmates. LSA-R.S. 13:713. A commissioner's written findings and recommendations are submitted to a district court judge who may accept, reject, or modify them. LSA-R.S. 13:713.

agency decision if substantial rights of the appellant are prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the agency's statutory authority;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) arbitrary, capricious, or characterized by an abuse of discretion; or
- (6) manifestly erroneous.

See LSA-R.S. 15:1177(A)(9); Pacificorp Capital, Inc. v. State Through Div. of Admin., Office of State Purchasing, 92-1729, p. 4-5 (La. App. 1 Cir. 8/11/94), 647 So.2d 1122, 1125, writ denied, 94-2315 (La. 11/18/94), 646 So.2d 387.

At the time of the disciplinary violation, LSA-R.S. 15:571.4 read, in pertinent part, as follows:

A. Determination shall be made by the secretary on a monthly basis as to whether good time has been earned by inmates in the department's custody. Good time which has been earned by inmates in the custody of the Department of Public Safety and Corrections, hereinafter referred to as the "department", shall not be forfeited except as provided in Subsection C of this Section.

B. (1) An inmate who is sentenced to the custody of the Department of Public Safety and Corrections and who commits a simple or aggravated escape, as defined in R.S. 14:110, from any correctional facility, work-release facility or from the lawful custody of any law enforcement officer or officer of the department, or, in the case of an inmate serving a sentence and participating in a work-release program authorized by law, fails to report to or return from his planned employment or other activity under the program may forfeit all good time earned on that portion of his sentence served prior to his escape.

(2) An inmate who has been returned to the custody of the department because of a violation of the terms of parole granted by the Board of Parole shall forfeit all good time earned on that portion of the sentence served prior to the granting of parole.

(3) An inmate who is sentenced to the custody of the department and who commits a battery on an employee of the Department of Public Safety and Corrections or any police officer as defined in R.S. 14:34.2 may forfeit good time earned on that portion of the sentence served prior to committing the battery of such person, up to a maximum of one hundred eighty days.

(4) In all other cases, forfeiture of good time may include up to a maximum of one hundred eighty days.

While Mr. Mack argues that the statute only authorizes the DPSC to take 180 days of good time for escape, parole violation, or battery on a DPSC employee, this argument is not supported by the language of the statute. Clearly, the forfeiture of up to 180 days of good time is authorized by the statute in all cases other than those enumerated in subsection B paragraphs (1), (2), and (3), (escape, parole violation, or battery on a DPSC employee). We find no error by the district court. Accordingly, the judgment of the district court dismissing appellant's action is affirmed.

CONCLUSION

The judgment of the district court dismissing appellant's petition for judicial review is affirmed. All costs of this appeal are assessed to plaintiff/appellant, Mr. Demond Mack.

AFFIRMED.