

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2007 CA 1430**

**DERRICK MOREAU**

**VERSUS**

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY  
AND CORRECTIONS, MARIANA LEGER, K. WILLIAMS,  
C. MAXWELL, RONNIE THERIOT,  
STEVE CHAMPAGNE, WAYNE SAVOY,  
AND KIM ROY**

Judgment Rendered: February 8, 2008

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On Appeal from the 19<sup>th</sup> Judicial District Court  
In and For the Parish of East Baton Rouge  
Trial Court No. 541,954

Honorable Curtis A. Calloway, Judge Presiding

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Derrick Moreau  
Vidalia, LA

Plaintiff/Appellant  
In Proper Person

William L. Kline  
Baton Rouge, LA

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

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**BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.**

*Guidry, J. concurs in the result.*

**HUGHES, J.**

This appeal challenges whether the district court properly dismissed this petition for judicial review of an inmate disciplinary action. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL HISTORY**

In an October 2005 disciplinary action, the plaintiff/inmate was found to have engaged in prohibited activities, theft, disobedience, and possession of unauthorized items and contraband while incarcerated at St. Martin Parish Correctional Center. Penalties totaling 540 days of lost good time were imposed following a disciplinary hearing.

The plaintiff/inmate then filed an administrative appeal to the warden from the disciplinary board decision, which was subsequently denied. Without appealing to the Department of Public Safety and Corrections (DPSC) Secretary, the plaintiff/inmate filed a petition for judicial review in the district court on March 31, 2006. On recommendation of the district court commissioner, the district court dismissed the suit, without prejudice, for failure of the plaintiff/inmate to exhaust his administrative remedies. This appeal followed.

On appeal, the plaintiff/inmate contends that because the warden did not respond to his administrative appeal within the delays allowed by DPSC procedural rules, he should be considered to have exhausted his administrative remedies.<sup>1</sup>

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<sup>1</sup> We note that with reference to the merits of the validity of the charges, the plaintiff/inmate alleged that seemingly all activities at issue were undertaken with the knowledge, approval, and/or under direct order of St. Martin Parish correctional officers, primarily Lieutenant Kim Roy, who he alleged was subsequently arrested for converting sheriff's department property for her personal gain.

## LAW AND ANALYSIS

The "Disciplinary Rules and Procedures for Adult Offenders" sentenced to the DPSC are published in Title 22 of the Louisiana Administrative Code, in Sections 341 through 369. Section 363(B)(1) provides:

An inmate who wants to appeal a case heard by the disciplinary board ("high court") must, in all cases, appeal to the warden. The inmate may appeal himself or through counsel or counsel substitute. In either case, the appeal must be received within 15 days of the hearing. The appeal should be clearly written or typed on Form AF-1. If the form is not available, the appeal may be on plain paper but should contain the information called for on the form. The warden will decide all appeals within 30 days of the date of receipt of the appeal and the inmate will be promptly notified in writing of the results (unless circumstances warrant an extension of that time period and the inmate is notified accordingly).

An inmate who is dissatisfied with the warden's appeal decision may further appeal in accordance with Section 363(C)(1), which provides in pertinent part:

An inmate who wants to appeal the decision of the warden to the secretary will indicate that he is "not satisfied" in the appropriate box on the Warden's "Appeal Decision" (Form AF-2) and submit it to the ARP screening officer, (or, in some units, the Warden's Office). The form must be submitted within five days of its receipt by the inmate. No supplement to the appeal will be considered. It is only necessary that the inmate check the box indicating "I am not satisfied," date, sign, and forward to the appropriate person. The inmate will receive an acknowledgment of receipt and date forwarded to the secretary's office. The institution will provide a copy of the inmate's original appeal to be attached to the Form AF-2 for submission to the secretary.

The plaintiff/inmate in this case submitted an appeal to the warden on November 9 2005 from the October 26, 2005 disciplinary hearing. On December 16, 2005, Deputy Warden Mariana Leger sent a letter to the plaintiff/inmate, stating: "Please be advised we have your Warden's Appeals

[sic]. Additional information and time is needed in order to finalize your appeal. You will be notified as to our decision in the near future."

On January 30, 2006, the plaintiff/inmate forwarded a letter to Deputy Warden Leger, written from Avoyelles Parish Prison in Marksville, stating in part as follows:

I was at Elayn Hunt on 10/26/05 for a disciplinary board hearing, heard by K. Williams and B. Maxwell. On 11/7/05 I was transferred to Allen Correctional Center and placed in lockdown on a PHD [sic] tier. I appealed the hearing officer's decision on 11/03/05 while at Elayn Hunt, HRDC [sic]. I ammended [sic] my appeal while at Allen Correctional on 11/14/05 or within a few days of that. I came to Marksville, La., 12<sup>th</sup> Judicial District Court for a motion I filed and have been held here for my Post Conviction Relief.

While here in Marksville, at Avoyelles Parish Prison, to be exact on 1/17/06, I received a letter from you written 12/18/05. In this letter you requested more time to answer my appeal. This letter was post marked by the St. Gabriel Post Office, on 12/20/05. I received the letter approximately 1 month later. To this date I have not received any final disposition of my appeal, from you or anyone else from Elayn Hunt.

Thereafter, on February 8, 2006, Deputy Warden Leger answered the plaintiff/inmate's letter, stating: "This will have reference to your letter of recent date regarding an appeal response which you claim you never received. Attached is a copy of the response." The attached "Appeal Decision" was dated December 16, 2005, and denied the appeal.

In his judicial appeal, the plaintiff/inmate argues that because he did not receive the warden's response within the thirty-day time period contained in the disciplinary rules, he should be considered as having exhausted his administrative remedies, thus entitling him to judicial review.

We recognize that the Louisiana Administrative Code provides in the Administrative Remedy Procedure (ARP) rules under Title 22, § 325(G) (4) that "[a]bsent ... an extension, expiration of response time limits shall entitle

the inmate to move on to the next step in the process."<sup>2</sup> However, this provision is found in the ARP rules, which provide a grievance process that is instituted by the inmate, whereas in the instant case the action involving the plaintiff/inmate was instituted by prison officials under the Disciplinary Rules and Procedures for Adult Offenders found in 22 La. Admin. Code, §§ 341-369, which has no similar provision. As indicated in the district court commissioner's written recommendation, an action for mandamus is available to compel official completion of a disciplinary appeal should the official fail to do so.

Moreover, the factual circumstances in the instant case are distinguishable from those contemplated by 22 La. Admin. Code, § 325 and **Sims v. Wackenhut Health Services, Inc.** In the instant case, the plaintiff/inmate was informed that additional time for the warden's appeal was needed by letter from the warden's office. Therefore, the plaintiff/inmate was aware that the thirty-day period for the warden's response had been extended. Subsequently, in January of 2006, the plaintiff/inmate forwarded a letter to the warden's office requesting information, and in return, a letter dated February 8, 2006 was sent to him attaching the December 16, 2005 warden's decision denying his appeal.

Because the delay for an inmate's appeal of a warden's decision to the DPSC Secretary is set by 22 La. Admin. Code, § 363(C)(1) as being five days from the "receipt" of the warden's decision, the plaintiff/inmate had five days from the day he received the warden's February 8, 2006 letter

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<sup>2</sup> This court has also ruled, with respect to this provision, that when the DPSC has effectively precluded an offender from proceeding to a review by the district court by failing to issue its decision as directed by the ARP provisions, the administrative remedies will be considered to have been pursued by the offender to the fullest extent possible under the circumstances, and the inmate will be allowed to seek a legal remedy in the district court. See Sims v. Wackenhut Health Services, Inc., 97-1147, pp. 6-7 (La. App. 1 Cir. 2/20/98), 708 So.2d 1140, 1143, writ denied, 98-0747 (La. 5/1/98), 718 So.2d 417.

enclosing the warden's decision to appeal to the DPSC Secretary. Despite this fact, the plaintiff/inmate elected to forgo submitting an appeal to the DPSC Secretary, and filed a judicial appeal in the district court on March 31, 2006 instead.<sup>3</sup> The Louisiana Legislature has clearly decreed that "[i]f at the time the petition [for judicial review] is filed the administrative remedy process is ongoing but has not yet been completed, the suit shall be dismissed without prejudice." LSA-R.S. 15:1172(C). The plaintiff/inmate in this matter failed to complete the appeal process provided to him within the correctional administrative system; therefore, the district court correctly dismissed his petition for judicial review.<sup>4</sup>

### CONCLUSION

For the reasons assigned, the judgment of the district court is affirmed. All costs of this appeal are to be borne by plaintiff/appellant, Derrick Morreau.

**AFFIRMED.**

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<sup>3</sup> The plaintiff/inmate could have instituted an appeal to the DPSC Secretary by signing, dating, and placing a check next to the pre-printed language on the bottom of the Warden's December 16, 2005 decision form, which stated, "I am not satisfied with this decision and wish to appeal to the Secretary...."

<sup>4</sup> Nevertheless, we note that the district court retains its original jurisdiction over "civil matters," which include claims involving unconstitutional deprivations of vested property rights, liberty interests, and other properly alleged violations of constitutionally protected rights. Included in this category would be disciplinary actions where the punishment involves the forfeiture of accrued good time (a liberty interest) or the unconstitutional deprivation of property (a vested property right). See **Madison v. Ward**, 2000-2842, p. 10 (La. App. 1 Cir. 7/3/02), 825 So.2d 1245, 1254 (citing **Lightfoot v. Stalder**, 2000-1120 (La. App. 1 Cir. 6/22/01), 808 So.2d 710, writ denied, 2001-2295 (La. 8/30/02), 823 So.2d 957). Although it was unclear from the record presented in this appeal whether the penalties imposed involved "accrued" good time, if so, the status of the administrative appeal process would not preclude the plaintiff/inmate from filing a separate civil action under the district court's original jurisdiction, rather than its appellate jurisdiction, to contest the deprivation of accrued good time.