

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 2295

ERROL HARRIS

VERSUS

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS AND TROY LAURENT**

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 536,552, Section 8
Honorable Wilson Fields, Judge Presiding**

**Errol Harris
Kinder, LA**

**Plaintiff-Appellant
In Proper Person**

**William Kline
Baton Rouge, LA**

**Attorney for Defendant-Appellee
State of Louisiana, Department
of Public Safety and Corrections**

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

Judgment rendered AUG - 6 2009

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JEW
by RKH*

PARRO, J.

This is an appeal from a judgment dismissing a former parolee's petition for damages against the Louisiana Department of Public Safety and Corrections (DPSC) and his parole officer for breach of contract. For the following reasons, we affirm.

Factual Background and Procedural History

Errol Harris (Harris)¹ was taken into custody for violating the conditions of his parole. A notice of the preliminary hearing was issued to Harris by the DPSC on December 30, 2004, advising him of his right to a preliminary hearing before the Board of Parole (Board) to determine if there was probable cause to believe there had been a violation of the conditions of his parole. In addition to acknowledging receipt of the notification of his rights and of the alleged violations, Harris opted to waive his right to a final parole revocation hearing. Relative to the waiver, the notice explained:

I admit that I am in violation of the conditions of my parole in the manner outlined by my Parole Officer in the Notice of Preliminary Hearing. In signing this waiver, I fully understand that I waive my rights and privileges to a final parole violation hearing before the Board of Parole, and that the Board, in all probability, will REVOKE my parole pursuant to [LSA-R.S.] 15:574.9A.

As an alternative to revocation, however, I understand, that without any promise or guarantee, the Board may:

(1) Continue my parole under the same or modified conditions of parole, and/or issue a formal reprimand of the violation is a misdemeanor or a technical violation of Parole conditions.

OR

(2) Order that I be committed to a Community Rehabilitation Center or Substance Abuse Program operated by, or under contract with[,] the [DPSC] for a period not to exceed six months.

Harris signed the notice on December 30, 2004, indicating that he understood his rights, which had been fully explained to him. After signing in the space provided for the fixing of a preliminary hearing, Harris's parole officer, Troy Laurent, wrote: "I will

¹ Harris is sometimes referred to in the record of this proceeding as "Earl Harris."

recommend [Blue] Walters treatment for ... Harris in [lieu] of revocation." After this declaration, the parole officer signed his name and recorded the date. Subsequently, the Board revoked Harris's parole, and Harris filed a petition in district court seeking damages for breach of contract by his parole officer. To his petition, he attached the December 30, 2004 "Notice of Preliminary Hearing."

In his petition, Harris alleged that his parole officer promised that he "would recommend to the Parole Board that [he] be enrolled in Blue [Walters] Drug Treatment in lieu of revocation of parole" as evidenced on page three of his notice of the preliminary hearing. He further asserted that his parole officer "coerced [him] to waive his appearance [before] the Parole Board by stating that the Parole Board would honor his recommendation without the need for an appearance by [him]." According to Harris, instead of recommending enrollment in Blue Walters Drug Treatment, his parole officer recommended revocation of his parole. Harris contended that the parole officer's actions resulted in a breach of their contract. Harris further alleged that he would not have waived his appearance before the Board had his parole officer not promised and assured him that his parole would not be revoked.

After reviewing Harris's petition, the commissioner for the district court recommended that the court notice on its own motion that Harris's petition failed to state a cause of action. The commissioner reasoned:

the parole board has total discretion when rendering a decision to revoke a release on parole as provided by R.S. 15:574.11. It is the decision of the Board to revoke a release on parole, not a supervising parole officer. A parole officer has no contractual relationship with a parolee, as the parole officer is given the duty to ensure the petitioner complies with the conditions of parole. A parole officer does not represent a parolee and a parolee would act in an irresponsible manner, if he seeks to base his decision in a revocation matter on any advice offered by a supervising agent. The petitioner is unable to show any duty owed on the part of his parole officer to make a recommendation to the parole board in this matter. The petitioner cannot establish a contractual relationship in this matter or demonstrate any delictual duty on the part of the defendants. The petitioner has no avenue of relief to challenge the denial of due process in the revocation process via R.S. 15:574.11.

In light of his inability to remove the grounds of the objection of no cause of action in

his pleading, the commissioner recommended against affording Harris the opportunity to amend his petition. Adopting the reasons of the commissioner, the district court, on its own motion, dismissed Harris's petition with prejudice for failure to state a cause of action. Harris appealed, contending that the district court denied him due process of law by failing to consider the issues raised in his petition.

Discussion

On appeal, Harris essentially urged that the Board erroneously revoked his parole in light of his mistaken reliance on the alleged actions of his parole officer. Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint, and the granting, conditions, or revocation of parole rest in the discretion of the Board. No prisoner or parolee shall have a right of appeal from a decision of the Board regarding release or deferment of release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole supervision or discharge from parole before the end of the parole period, or the revocation or reconsideration of revocation of parole, except for the denial of a revocation hearing under LSA-R.S. 15:574.9. LSA-R.S. 15:574.11. In pertinent part, LSA-R.S. 15:574.9(A) provides:²

When a parolee has been returned to the physical custody of the Department of Public Safety and Corrections, office of corrections services, the board shall hold a hearing to determine whether his parole should be revoked, unless said hearing is expressly waived in writing by the parolee. A waiver shall constitute an admission of the findings of the prerevocation proceeding and result in immediate revocation. If the revocation hearing is not waived, the parolee shall be permitted to consult with and be advised and represented by his own legal counsel or legal counsel appointed under the provisions of R.S. 15:179. At the hearing the parolee may admit, deny, or explain the violation charged, and he may present proof, including affidavits and other evidence, in support of his contentions. Upon request of the parolee, the parole board may postpone the rendering of its decision for a specified reasonable time pending receipt of further information necessary to a final determination.

To properly assert his right to review of the Board's decision, a parolee is required to file a petition for judicial review in district court, alleging that his right to a revocation

² Pursuant to 2008 La. Acts, No. 220, § 6, "R.S. 15:179" was substituted for "R.S. 15:149" in the third sentence of Subsection A to conform with the changes made by 2007 La. Acts, No. 307, §§ 1, 11, and 16.

hearing was denied or the procedural due process protections specifically afforded by LSA-R.S. 15:574.9 in connection with such a hearing were violated. See Leach v. Louisiana Parole Bd., 07-0848 (La. App. 1st Cir. 6/6/08), 991 So.2d 1120. No such petition for judicial review was filed in this case. Instead, the parolee, Harris, chose to file a petition for monetary damages based on allegations of breach of contract. In the absence of a petition for review containing allegations sufficient to establish a right to appeal pursuant to LSA-R.S. 15:574.11, we are unable to consider the propriety of the Board's decision or the validity of Harris's waiver.

Furthermore, since the Board has total discretion when rendering a decision to revoke a release on parole,³ we fail to see how the parole officer's alleged failure to recommend treatment for Harris at Blue Walters in lieu of revocation as allegedly promised in writing on December 30, 2004, would entitle Harris to damages under the facts alleged. The language in Section II of the notice relative to the waiver of the final revocation hearing clearly indicated that Harris's parole would very likely be revoked. Although the possibility of commitment to a treatment facility like Blue Walters was recognized in the notice as an alternative to revocation, the notice expressly stated that Harris's waiver in no way promised or guaranteed that the Board would select an alternate disposition. Additionally, the parole officer's recommendation of Blue Walters is evident from the face of the notice of the preliminary hearing that was provided to and signed by Harris, which would have been part of the record in the revocation proceeding before the Board.

Conclusion

Consequently, we find no error in the district court's dismissal of Harris's petition on the basis of no cause of action. For the foregoing reasons, we affirm the judgment at Errol Harris's costs.

AFFIRMED.

³ See LSA-R.S. 15:574.11.