

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1475

EUGENE MOORE

VERSUS

JENNIFER ALLEMOND, ALLEN CORR.
CENTER, TRACY DIBENEDETTO (DPSC),
LINDA RAMSEY (DPSC), MARIE CAMPELL (DPSC),
LOUISIANA DEPT. OF CORRECTIONS

Judgment rendered February 11, 2011.

Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 586,473
Honorable Wilson Fields, Judge

EUGENE MOORE
DEQUINCY, LA

WILLIAM KLINE
BATON ROUGE, LA

PLAINTIFF-APPELLANT
IN PROPER PERSON

ATTORNEY FOR
DEFENDANT-APPELLEE
LOUISIANA DEPARTMENT
OF CORRECTIONS

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

PETTIGREW, J.

This is an appeal from a judgment dismissing, without prejudice, a prisoner's application for temporary restraining order for lack of subject matter jurisdiction and failure to state a cause of action. For the following reasons, we affirm.

DISCUSSION

According to the record, petitioner, Eugene Moore, a prisoner in the custody of the Louisiana Department of Public Safety and Corrections ("DPSC"), filed an application for a temporary restraining order ("TRO") and permanent injunction claiming that DPSC was going to erroneously require him to comply with sex offender registration on his current (non-sex offense) sentence when released on parole, even though he previously and successfully completed his prior term of parole for a sex offense. Petitioner sought an immediate TRO and a permanent injunction to prevent DPSC from requiring him to register as a sex offender, based on alleged ex post facto application of the registration requirements. A screening judgment by the trial court dated March 31, 2010, adopted the written recommendation of the Commissioner and dismissed petitioner's complaint, without prejudice, for lack of subject matter jurisdiction and failure to state a cause of action. The Commissioner's screening report noted as follows:

[T]his is a complaint against [DPSC] that [La.] R.S. 15:1171B requires to be exhausted through the administration prior to subject matter jurisdiction attaching to this Court. The Petitioner does not allege facts that would support a finding that he is in imminent danger of bodily harm, which is the only exigent circumstance that would necessitate a summary adjudication.

Since this suit involves the ramifications of a prior prison sentence, release on parole and a current sentence together with another parole release, the Petitioner is limited to review of an administrative record only. He does not identify any record for review nor does he file this as an appeal or on the uniform appellate petition required. Therefore, he fails to show that this court has subject matter (appellate) jurisdiction and he states no cause of action for a temporary restraining order or other relief at this juncture. The fact that he may have to register as a sex offender at some future date does not warrant a [TRO].

Exhaustion and timely appeal is required by [La.] R.S. 15:1171B and the Department's Rules before this Court can entertain this complaint. Specifically, [La. R.S.] 15:1176 states the following in part:

Before any cause of action may be heard in any state or federal court, administrative remedies must be exhausted under the procedure authorized by this Part.

Until and unless the Petitioner has timely exhausted administrative remedies, this Court has no jurisdiction or authority to entertain his complaint. In the case of Marler v. Day, [94-0104 (La. App. 1 Cir. 11/10/94), 645 So.2d 1237], the First Circuit noted that failure to exhaust administrative remedies prevents subject matter jurisdiction and must result in a court's dismissal of the claim. Further, the Petitioner does not allege facts (and there is no applicable law) that would support a finding that he is entitled to the relief sought herein--a TRO.

Pursuant to [La.] R.S. 15:1178 and [La.] R.S. 15:1188, this Court is required to screen all prisoner suits prior to requiring service on the Defendants in order to determine whether the Court has jurisdiction and whether the petition states a cause of action, or cognizable claim, or whether or not it is frivolous. Further, by virtue of Art. 927 C.C.P., this Court can raise the exception of no cause of action and no subject matter jurisdiction at any time, ex proprio motu. Pursuant to the screening authority stated, this report is issued recommending dismissal without prejudice after the Court's de novo consideration and adjudication, based on a lack of subject matter jurisdiction and a failure to state a cause of action. [Footnotes omitted.]

This appeal by petitioner followed. After a review of the record, we find no error in the trial court's judgment herein. Dismissal without prejudice was appropriate.¹

DECREE

The judgment of the trial court dismissing Eugene Moore's complaint without prejudice is affirmed. All costs associated with this appeal are assessed against appellant, Eugene Moore.

AFFIRMED.

¹ Because we conclude, as did the trial court, that petitioner was required to exhaust administrative remedies before subject matter jurisdiction attached to the trial court and that petitioner's complaint failed to state a cause of action for a TRO, we pretermitted consideration of the issues raised by petitioner in the instant appeal.