

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1869

EUGENE VESSEL

VERSUS

**JAMES M. LEBLANC, DIRECTOR, LOUISIANA DEPARTMENT OF
CORRECTIONS AND TERRY FERRELL, WARDEN**

Judgment Rendered: June 11, 2010

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 566,732**

The Honorable Todd Hernandez, Judge Presiding

**Eugene Vessel
Winnsboro, LA**

**Plaintiff/Appellant in Proper Person,
Eugene Vessel**

**Jonathan R. Vining
Baton Rouge, LA**

**Counsel for Defendant/Appellee,
James M. LeBlanc**

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WHIPPLE, J.

Plaintiff, Eugene Vessel, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the Department”) housed at Franklin Parish Detention Center, challenges a judgment of the district court dismissing his petition for writ of habeas corpus seeking review of administrative remedy No. ALC-2007-924, with prejudice. For the following reasons, we vacate and remand.

PROCEDURAL HISTORY

On August 1, 2007,¹ plaintiff filed an Administrative Remedy Procedure (“ARP”) seeking restoration of “good time,” which he contended had been forfeited improperly on nine instances between September 2001 and January 2006 while he was housed at Allen Correctional Center. Specifically, plaintiff contended that these forfeitures had been imposed by Wackenhut Corrections Corporation (WCC) and Global Expertise Outsourcing (GEO), two private prison contractors, in violation of LSA-R.S. 39:1800.5² and Singleton v. Wilkinson, 2006-0637 (La. App. 1st Cir. 2/14/07), 959 So. 2d 969.³

¹A copy of the same ARP appears in the administrative record with the date scratched through and “Sept. 4” written above the date.

²Louisiana Revised Statute 39:1800.5 provides, in part, as follows:

No contract for correctional services shall authorize, allow, or imply a delegation of authority or responsibility to a prison contractor for any of the following:

* * *

(5) Granting, denying, or revoking sentence credits.

³In Singleton v. Wilkinson, 2006-0637 (La. App. 1st Cir. 2/14/07), 959 So. 2d 969, 971, this court held that in accordance with LSA-R.S. 39:1800.5, the Department’s “oversight and approval [was] required to validate [the prison contractor] officials’ decision imposing forfeiture” of an inmate’s good time days. This court further acknowledged therein that while it may be impractical to have a Department employee present at each and every disciplinary hearing, departmental oversight of such proceedings must be consistently and clearly delineated by the presence of a Department official’s initials on each disciplinary report that is reviewed.

On September 24, 2007, the Department denied plaintiff's request for relief in its First Step Response, noting that "[a] DPSC Records Analyst is located on-site and monitors recommendations for forfeiture of good time relating to disciplinary sanctions imposed by the Board." In denying his Second Step Request on January 4, 2008, the Department further noted, "Ms. Priscilla Pitre, a trained time computation analyst employed full time by the Department of Public Safety and Corrections, reviews all disciplinary reports adjusting dates as good time forfeitures occur."

On May 6, 2008, plaintiff filed a "Petition for Writ of Habeas Corpus" in district court, seeking judicial review of his ARP. The Commissioner issued a report on March 12, 2009, noting that although the disciplinary board that heard the reported violations charged against plaintiff was comprised of employees of the prison contractor, Priscilla Pitre, the person who actually calculates good time earnings and certifies good time forfeitures, is an employee of the Department.⁴ The Commissioner then determined that each disciplinary report involved in plaintiff's complaint showed that the Department's representative and employee, Priscilla Pitre, "timely signed and dated each one." Finding that "[i]n this case, the record shows that Ms. Pitre, a [Department] employee[,] initialed and dated each of the disciplinary reports within a few days of the hearings, as required by Singleton," the Commissioner concluded that the Department's decision to deny plaintiff relief was neither arbitrary, capricious, or manifestly erroneous and was in accordance with LSA-R.S. 15:571.4 and LSA-R.S. 39:1800.5.

⁴In her report, the Commissioner noted that plaintiff does not dispute that he violated the Department's prison regulations, and that the record does not show if plaintiff filed any timely appeals of those forfeitures in accordance with the Department's rules. The Commissioner also noted that nonetheless, plaintiff was challenging the forfeiture of his good time for various prison rule violations via ARP, rather than by Disciplinary Board Appeal, the Department appellate process available to all inmates to ensure that the Secretary makes the final decision on forfeiture of good time. As the Commissioner recognized, the issue of whether plaintiff timely appealed any or all of these forfeitures cannot be determined, since the instant matter was not asserted as a Disciplinary Board Appeal, but as an ARP challenging the forfeitures *in toto*.

Adopting the Commissioner's Report and the reasons set forth therein, the district court rendered judgment on April 14, 2009, affirming the Department's decision and dismissing plaintiff's appeal with prejudice at plaintiff's costs. Plaintiff then filed the instant appeal.

DISCUSSION

On appeal, plaintiff contends that the district court erred in dismissing his petition for habeas corpus and judicial review and in ultimately affirming the rejection of his complaint.⁵ Specifically, plaintiff contends that private prison contractors have no authority to "impose" or "recommend" forfeiture of good time to the Department, and that such a forfeiture of good time based on such recommendation could not be used as a sanction in a disciplinary hearing at Allen Correctional Center. We disagree.

Louisiana Revised Statute 15:571.4(A) provides that a "[d]etermination 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." Louisiana Revised Statute 15:571.4(D) provides that "[t]he department shall adopt rules to govern the imposition of the forfeiture of good time ... in accordance with the Administrative Procedure Act." As set forth above, the duty to grant, deny, or revoke sentence credits (good time) shall not be delegated to a prison contractor. LSA-R.S. 39:1800.5. In Singleton, this court recognized that "it is understandable that for practical purposes," a Department employee may not be present at each and every disciplinary hearing. Singleton, 2006-0637, 959 So. 2d at 971. Thus, this court held that the Department's statutory duty is satisfied as long as a Department employee provides necessary oversight and review over each disciplinary matter. Singleton v. Wilkinson, 959 So. 2d at 971. Accordingly, we agree with the

⁵Although plaintiff does not set forth specific "assignments of error" in his brief on appeal, we elect to address the two main "arguments" urged in his brief.

Commissioner's conclusion that the system in place complies with the law and authorizes Department employees to make the necessary sentence re-calculations when good time is earned or forfeited in accordance with statutory law and/or the Department's Disciplinary Rules and Procedures. Thus, we find no merit to this portion of plaintiff's argument on appeal.

However, with reference to plaintiff's complaint that the Department failed to timely provide the necessary oversight and approval over sanctions imposed in a June 8, 2002 disciplinary report, (i.e., forfeiture of 30 days of good time credit), we find merit.⁶ The record reflects that this report was not reviewed and approved by the designated Department employee, Priscilla Pitre, until February 17, 2009, or approximately seven years later, and only after the proceedings below commenced. Thus, to the extent that the Commissioner found that each of plaintiff's disciplinary reports were "timely signed and dated ... within a few days of the hearings," we find the Commissioner erred.

Because it is clear from the record that the requisite oversight and approval necessary to validate the prison contractor's decision imposing forfeiture of plaintiff's good time as a result of his June 8, 2002 disciplinary offenses was not timely provided by the Department, we must remand this matter to the Department to order the restoration of plaintiff's good time credit forfeited in violation of LSA-R.S. 39:1800.5. Accordingly, we vacate the April 14, 2009 judgment of the district court and remand this matter to the Department for further proceedings pursuant to LSA-R.S. 15:1177(A)(8). See Singleton v. Wilkinson, 2006-0637, 959 So. 2d at 971.

⁶In conducting our review, we note that the Department did not object to plaintiff's use of ARP to review disciplinary forfeitures, which seemingly could and should have been reviewed through the procedures governing such appeals. Instead, the Department specifically acquiesced in the expansion and supplementation of the administrative record to include the pertinent disciplinary violations report. Cf. Walker v. Louisiana Department of Corrections, 2009-0057 (La. App. 1st Cir. 6/11/10), ___ So. 3d ___, also decided this date.

CONCLUSION

After thorough review of the record and relevant jurisprudence, the April 14, 2009 judgment of the district court is vacated and this matter is remanded to the Department for further proceedings consistent with the views expressed herein. All costs associated with this appeal in the amount of \$1,038.10 are assessed to the appellees, James M. LeBlanc, Director, Louisiana Department of Corrections and Terry Ferrell, Warden.

VACATED AND REMANDED.