

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

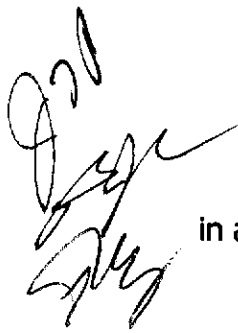
NO. 2009 CA 2071

FREDDIE CANN

VERSUS

JAMES LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF
PUBLIC SAFETY & CORRECTIONS

Judgment rendered May 7, 2010.



Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 578458
Honorable Todd Hernandez, Judge

FREDDIE CANN
KEITHVILLE, LA

WILLIAM KLINE
BATON ROUGE, LA

IN PROPER PERSON
PLAINTIFF-APPELLANT

ATTORNEY FOR
DEFENDANT-APPELLEE
LOUISIANA DEPARTMENT OF
CORRECTIONS

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

PETTIGREW, J.

In this case, petitioner, an inmate in the custody of the Department of Public Safety and Corrections ("DPSC"), filed a request for relief pursuant to La. R.S. 15:1177, seeking judicial review of the final agency decision rendered under Administrative Remedy Procedure ("ARP") Number DWCC 2009-0 369, concerning what petitioner alleged was an illegal "extension" by DPSC of his sentence from the original full term date set by the sentencing court. Petitioner's request for credit for time served while on parole supervision was reviewed and denied at the first and second steps of the ARP as follows: "When an offender's ... parole supervision is revoked ..., the offender shall serve the remainder of his sentence as of the date of his release on supervision pursuant to La. R.S. 15:571.5.^[1] This means that you ... serve the balance from your [good-time/parole-supervision] date to your original full term date." A commissioner at the 19th Judicial District Court reviewed the record and recommended that petitioner's suit be dismissed as frivolous for failure to state a cause of action. Petitioner timely filed a traversal of that recommendation, reiterating his arguments to the court. On July 16, 2009, a judgment was signed by the trial court, adopting the written recommendation of the commissioner and dismissing petitioner's suit, at his costs, as frivolous. This appeal by petitioner followed.

On appeal, petitioner contends DPSC erred in failing to award him credit for time served while on parole. Petitioner argues as follows with regard to this issue:

[I]f the petitioner had a 30 year sentence and served 15 years, he should only have to serve 15 years on Parole, then if he satisfactorily completed five (5) years on Parole, then was revoked for a technical violation, he would only have to serve ten (10) years in the Louisiana Department of

¹ Louisiana Revised Statutes 15:571.5 provides, in pertinent part, as follows:

A. (1) When a prisoner committed to the Department of Public Safety and Corrections is released because of diminution of sentence pursuant to this Part, he shall be released as if released on parole.

....

C. If such person's parole is revoked by the parole board for violation of the terms of parole, the person shall be recommitted to the department for the remainder of the original full term.

Corrections, because this is the time that is left on his sentence of thirty years, imposed by the sentencing court.

Thus, petitioner asserts that when returned to custody after his parole violation, the computation of "the remainder of the original full term" of his sentence should include the time he spent released on parole.

This argument was made and rejected in the case of **Bancroft v. Louisiana Dept. of Corrections**, 93-1135, p. 3 (La. App. 1 Cir. 4/8/94), 635 So.2d 738, 740, in which this court concluded that there was no merit to the inmate's argument that he was entitled to credit against his sentence for the time spent free under parole conditions. Citing **Parkerson v. Lynn**, 556 So.2d 91, 95 (La. App. 1 Cir. 1989), writ denied, 563 So.2d 1151 (La. 1990), the **Bancroft** court noted:

The purposes of parole and probation are for the rehabilitation of the criminal and are acts of grace to one convicted of a crime. Because parole and/or probation are less restrictive on the offender's freedom than penal incarceration, and are acts of grace to the offender, violation of parole and/or probation has consequences such as no entitlement to credit against the offender's sentence for the time spent on probation and/or parole. [Citations omitted.]

Bancroft, 93-1135 at 3, 635 So.2d at 740.

Based on our review of the record and relevant jurisprudence, we find no error by DPSC in refusing to award credit against the remainder of petitioner's sentence for the time he spent free under parole conditions. We, therefore, affirm the judgment of the trial court, which dismissed petitioner's suit as frivolous. We issue this summary disposition in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.2A(5), (6), (7), and (8). All costs associated with this appeal are assessed against petitioner, Freddie Cann.

AFFIRMED.