

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2011 CA 0756**

**GARRY U. JONES, SR.**

**VERSUS**

**LOUISIANA BOARD OF PAROLE, JAKE JACOBS,  
WINZER ANDREWS & GRETA JONES**

Judgment Rendered: **NOV - 9 2011**

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On Appeal from the 19th Judicial District Court  
In and for the Parish of East Baton Rouge  
Docket No. 596,242 Division 25

Honorable Wilson Fields, Judge Presiding

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Garry U. Jones, Sr.  
Angie, LA

Plaintiff/Appellant  
Pro Se

William Kline  
Baton Rouge, LA

Counsel for Defendant/Appellee  
Louisiana Department of Corrections

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**BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.**

**HUGHES, J.**

This is an appeal from a judgment of the Nineteenth Judicial District Court (JDC) that dismissed plaintiff/appellant's claim without prejudice. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL HISTORY**

On November 3, 2010 Garry U. Jones, Sr., an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), filed a "Petition for Review of Parole Board Actions" in the 19<sup>th</sup> JDC. The petition alleged that the Louisiana Parole Board, after a September 28, 2010 hearing, failed to grant him release on parole. Pursuant to the screening requirements of LSA-R.S. 15:1178(B) and 15:1188(A), the petition was assigned to a commissioner at the district court to determine if it stated a cognizable claim or if the petition, on its face, was frivolous, malicious, failed to state a cause of action, or sought monetary damages from a defendant who was immune from liability for such damages. After completing the screening review, the commissioner issued a report recommending dismissal, without prejudice and without service on the defendants, because the petition failed to state "a cause and right of action."

After a review of the record, the district court rendered judgment on January 25, 2011, adopting the written recommendation of the commissioner and dismissing the petition, without prejudice and without service on the defendants, at Mr. Jones's costs, for failure to state "a cause and right of action."

Mr. Jones appeals the judgment of the district court assigning as error the district court's conclusion that it does not have judicial oversight authority over the actions of the parole board and that the court thus erred in dismissing his petition without service on the defendants.

## LAW AND ANALYSIS

Louisiana's system of parole is set out in LSA-R.S. 15:574.2, *et seq.* Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint. LSA-R.S. 15:574.11. A Board of Parole is established within the DPSC and is vested with the authority to determine "the time and conditions of release on parole" for offenders sentenced to imprisonment and confinement in correctional or penal institutions in this state. LSA-R.S. 15:574.2(A) and (C).

Louisiana Revised Statutes 15:571.11(A) states that "[n]o prisoner or parolee shall have a right of appeal from a decision of the [parole] 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 R.S. 15:574.9.**" (Emphasis added.) LSA-R.S. 15:571.11(A).

Thus, only claims alleging the failure of the board to hold a revocation hearing for individuals already released on parole are reviewable by the district court. Decisions by the parole board at a hearing to deny parole are not entitled to review. While in his petition and in brief to this court, Mr. Jones alleges that release on parole is a vested liberty interest, the Louisiana Supreme Court has concluded that Louisiana's parole statutes do not create an expectancy of release or liberty interest. **Bosworth v. Whitley**, (La. 1993) 627 So.2d 629, 633. The parole board has full discretion when passing on applications for early release. **Bosworth v. Whitley**, 627 So.2d at 633. Even if an inmate is fully rehabilitated and is clearly eligible for parole consideration, the parole scheme simply does not require that he be

paroled. **Sinclair v. Kennedy**, 96-1510 (La. App. 1 Cir. 9/19/97), 701 So.2d at 457, 462. The procedures used by the parole board in deciding whether an inmate should be released early “are beyond the scope of this court’s review.” See Sinclair, 701 So.2d at 462.

Mr. Jones’s claim erroneously relies on the hearing requirements for one already released on parole and facing revocation, rather than to one merely eligible for parole consideration. Essentially, Mr. Jones attacks the parole board’s ability to deny parole “based upon the serious nature of the offense,” contending that the denial of parole on that basis evidences a pre-determination by the parole board, as the nature of the offense for which one is charged never changes, cannot be altered or amended by any rehabilitative efforts of the offender, and is a factor with no “penological” goal. In support of his argument, Mr. Jones contends that the legislature clearly intended that the benefit of parole be available to anyone adjudicated guilty of violating certain offenses and that the parole board’s denial of parole on the basis of the “serious nature of the offense” precludes the realization of the benefit, as the legislature intended, and amounts to the parole board “re-sentencing” the offender. Mr. Jones implies that the failure of one of the parole board members to make eye contact with him during the parole hearing, and another board member “rifling” through papers during the hearing mandates that the hearing be deemed “informal” and therefore failed to meet the requirements statutorily imposed. Again, LSA-R.S. 15:574.9 deals with parole revocations, not with denials of release on parole. There is no statutory basis for Mr. Jones to seek review of the parole board’s decision denying him early release on parole. Pleadings challenging actions of the parole board other than failure to act in accordance with LSA-R.S. 15:574.9

should be dismissed by the district court. **Madison v. Ward**, 00-2842 (La. App. 1 Cir. 2002), 825 So.2d 1245, 1250 (*en banc*).

### **CONCLUSION**

For the reasons assigned herein, the judgment of the 19<sup>th</sup> JDC is affirmed. All costs of this appeal are assessed to plaintiff/appellant, Garry U. Jones, Sr.

**AFFIRMED.**