

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1478

GARY HALLER

VERSUS

TERRY TERRELL, WARDEN, ALLEN CORRECTIONAL CENTER  
AND THE GEO GROUP

Judgment Rendered: **MAR 28 2012**

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Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Suit Number 595,523

Honorable Kay Bates, Presiding

\*\*\*\*\*

Gary Haller  
Kinder, LA

Plaintiff/Appellant  
In Proper Person

Samuel B. Gabb  
Lake Charles, LA

Defendants/Appellees  
Warden Terry Terrell, The Geo Group  
& Louisiana Department of Public  
Safety and Corrections

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

*Guy*  
*VGW by [Signature]*  
*[Signature]*

**GUIDRY, J.**

Plaintiff, Gary Haller, an inmate in the custody of the Department of Public Safety and Corrections (the Department), appeals from a judgment of the district court, dismissing his claim without prejudice. For the reasons that follow, we affirm.

Haller alleges that he filed numerous requests, seeking protective measures with regard to inmates at Allen Correctional Center who are required to work outdoors, noting the warnings and recommendations from the Center for Disease Control, the U.S. Department of Health and Human Services, the National Cancer Institute, and the U.S. Attorney General regarding exposure to ultraviolet light from the sun. Haller asserts that Allen Correctional Center must make every effort to comply with the aforementioned recommendations as they relate to the health, safety, and well-being of inmates. Further, Haller asserts that by denying inmates adequate protection from prolonged exposure to the sun, the Department unnecessarily exposes those inmates to harm. In Administrative Remedy Procedure (ARP) No. ALC-2009-516, the Department denied Haller's request for relief, stating that "all approved protective clothing and related items are provided to offenders who work outdoors." The Department further noted that sunblock had been added to the working cellblock store sheet.

Haller filed a petition for judicial review of the final agency decision of the Department with the 19<sup>th</sup> Judicial District Court, seeking an order directing the Department to provide inmates the opportunity to secure proper/adequate protection from the sun, by either providing or allowing inmates to purchase (indigents included): adequate hats, long-sleeve shirts, sunglasses, and sunblock/sun screen of SPF 40 or higher. The district court, after a *de novo* review, adopted the recommendation of the commissioner and dismissed Haller's petition without prejudice.

The commissioner's recommendation to the district court raised the issue of venue *sua sponte* and recommended that the case be dismissed, because it involved a claim based on alleged delictual actions/negligence of prison personnel in the wrong venue and in the wrong format. After a careful review of the record, we agree with the commissioner's determination that Haller's claim is more in the nature of a delictual action against prison personnel, as it alleges impending harm to the health and safety of certain inmates based on negligence or deliberate indifference by prison personnel. Therefore, we agree with the district court's judgment adopting the commissioner's recommendation that Haller's claim be dismissed. See Pope v. State, 99-2559 (La. 6/29/01), 792 So. 2d 713, 719-720 (suits based on delictual action or seeking monetary damages are properly heard under the district court's original jurisdiction); Gray v. State, 05-617 (La. App. 3rd Cir. 2/15/06), 923 So. 2d 812, 817 (claims involving a liberty interest or asserting deprivation of a constitutionally protected right are traditional civil matters over which the district court retains original jurisdiction). See also La. R.S.15:1177(C) (stating "[t]his Section shall not apply to delictual actions for injury or damages, however styled or captioned. Delictual actions for injury or damages shall be filed separately as original civil actions").

Further, La. R.S. 15:1184(F) provides "[t]he exclusive venue for delictual actions for injury or damages shall be the parish where the prison is situated to which the prisoner was assigned when the cause of action arose." Haller was housed at Allen Correctional Center in Allen Parish; thus, venue was mandatory in that parish, not East Baton Rouge Parish.

For the foregoing reasons, we issue this summary opinion in accordance with Uniform Rules—Courts of Appeal Rule 2-16.2(A)(4)-(8), affirming the judgment of the district court and dismissing Haller's appeal. Given the procedural

posture of this appeal and Haller's status as a pauper, we decline to assess costs.

**AFFIRMED.**