

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 1308

GREGORY DAMM

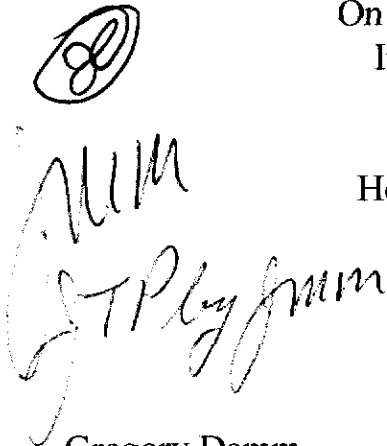
VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: JAN 29 2009

On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge
Trial Court No. 545,677

Honorable Curtis Calloway, Judge Presiding



Gregory Damm
Cottonport, LA

Plaintiff/Appellant
In Proper Person

Jonathan R. Vinning
Baton Rouge, LA

Defendant/Appellee
Louisiana Department of Public
Safety and Corrections and Richard
Stalder

BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.

HUGHES, J.

Gregory Damm, an inmate currently incarcerated at Avoyelles Correctional Center, appeals a trial court judgment adopting the Commissioner's recommendation and dismissing his request for habeas and injunctive relief with prejudice. After a thorough review of the record, we are convinced the judgment of the trial court is correct and accordingly affirm.

On October 29, 2001 Mr. Damm was arrested and charged with two counts of aggravated oral sexual battery allegedly perpetrated against minor children during the time period from May 1, 2001 through August 1, 2001. At that time, the crime of oral sexual battery was considered aggravated oral sexual battery pursuant to La. R.S. 14:43.4 when, among other circumstances, the acts were perpetrated against minor children. Mr. Damm was convicted on both charges and on July 30, 2002 he was sentenced to imprisonment of ten years with hard labor on each count, to run concurrently and without the benefit of parole, probation, or suspension of sentence.

After Mr. Damm was arrested and charged, but before he was sentenced, the Louisiana Legislature repealed La. R.S. 14:43.4, the statute under which Mr. Damm was convicted, by Acts 2001, No. 301, §2, effective August 15, 2001. Mr. Damm's misplaced reliance on the repeal of that statute and his erroneous interpretation of the effect of that repeal form the basis of his claim herein. Although couched in terms of computation of time and discharge date issues, which as noted by the Commissioner must be raised in a properly filed administrative procedure, Mr. Damm's claims are actually based on the same alleged, yet faulty, premise -- that his detention is unlawful and that he should be released.

Essentially, Mr. Damm asserts that the repeal of the statute under which he was convicted (and the corresponding deletion of aggravated oral sexual battery in

the department's revised Regulation No. B-04-001 related to the computation of sentences) affected the "legality of [his] '[s]entence [c]omputation' and purported '[d]ischarge date'" because it rendered it impossible for the department "to calculate his time computation or release date" when the statute under which he was convicted no longer existed.

The Commissioner's report expressly addresses Mr. Damm's claim and fully explains why the repeal of the statute had no effect whatsoever on Mr. Damm's sentence and incarceration.¹ The Commissioner and the trial court were correct in finding that the record establishes that Mr. Damm's continued detention is lawful.

Accordingly, in accordance with the Uniform Rules of Louisiana Court of Appeal, Rule 2-16.2 A (5)(6) & (7), we affirm the judgment of the trial court by summary disposition. Costs of this appeal are assessed to Mr. Gregory Damm.

AFFIRMED.

¹ See also **Damm v. Cooper**, 2005 WL 2106153 (W.D. La), an unpublished opinion in which this exact issue was fully analyzed and resolved.