

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 2255

HARVEY MENNE

VERSUS

CONNIE KENNEDY, RECORDS CUSTODIAN, DIXON  
CORRECTIONAL INSTITUTE, WARDEN STEVE RADER  
AND DEPARTMENT OF CORRECTIONS SECRETARY  
JAMES LEBLANC

Judgment Rendered: JUN 11 2012

\* \* \* \* \*

On Appeal from the  
19th Judicial District Court,  
In and for the Parish of East Baton Rouge,  
State of Louisiana  
Trial Court No. 601,726

Honorable Timothy Kelley, Judge Presiding

\* \* \* \* \*

Harvey Menne  
Jackson, LA

Plaintiff-Appellant,  
In Proper Person

William Kline  
Baton Rouge, LA

Attorney for Defendant-Appellee,  
Louisiana Department of Corrections

\* \* \* \* \*

BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

*TMH*  
*SK*  
*RNP/ky*  
*RAC*

## **HIGGINBOTHAM, J.**

Harvey Menne, a prisoner in the custody of the Louisiana Department of Public Safety and Corrections (DPSC) appeals a screening judgment in which the district court, on its own motion in accordance with the commissioner's recommendation,<sup>1</sup> granted an exception of no cause of action in favor of the DPSC thereby dismissing Menne's petition for judicial review with prejudice. For the following reasons, we affirm.

### **BACKGROUND**

Menne, an inmate at Dixon Correctional Institute, filed for judicial review of the decision of the DPSC and for injunctive relief. According to the record, Menne was convicted in Orleans Parish of manslaughter and sentenced to 15 years at hard labor on April 21, 1995, with a release date of August 10, 2009. Menne signed a "Double Good Time Option and Approval Form" to become eligible for good time. Menne was released "as if on parole" by diminution of sentence in accordance with La. R.S. 15:571.5 on May 27, 2002, after serving approximately 7 years and 10 months of his sentence. While on parole, Menne was convicted on November 17, 2008, for DUI. As a result, his parole was revoked on April 2, 2009. Menne filed an administrative remedy procedure request pursuant to the Corrections Administrative Remedy Procedure Act, La. R.S. 15:1171-1179; arguing that he was falsely imprisoned. His claim was denied at both steps of the process. According to the explanation in the first step of Menne's administrative proceeding, he owed the DPSC a balance of 7 years, 2 months, and 13 days, which after good time consideration resulted in a new release date of August 17, 2012.

Menne filed a petition for judicial review with the 19th Judicial District Court seeking reversal of the decision of the DPSC. Menne contends that he has

---

<sup>1</sup> The office of commissioner of the 19th JDC was created by La. R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. The commissioner's written findings and recommendations are submitted to a district court judge, who may accept, reject, or modify them. La. R.S. 13:713(C)(5).

been falsely imprisoned, and should be entitled to immediate release and monetary damages because he is being held past his release date. Menne argues that he should have received a 90 day turnaround pursuant to La. R.S. 15:574.9 when his parole was revoked for a technical violation. H contends he was wrongly required to serve the balance remaining on his sentence. As the commissioner's recommendation correctly noted La. R.S. 15:574.9(G), which provides for a 90 day sentence for a first technical violation of parole, does not apply to Menne because he was convicted of manslaughter which is a crime of violence under La. R.S. 14:2.<sup>2</sup> The DPSC is required to follow the mandate of La. R.S. 15:571.5(C) and order that Menne complete the balance owed on his full term upon the revocation of his release pursuant to earned good time credits.

Menne further contends that he only agreed to parole supervision under duress and that requiring him to serve the balance of his sentence violates equal protection provisions, denies him due process, subjects him to double jeopardy, and constitutes ex post facto application of law regarding his sentence. La. R.S. 15:571.5 clearly provides that a person whose parole is revoked "shall be recommitted to the department for the remainder of the original full term." The statute provided in pertinent part as follows at the time of Menne's release:

---

<sup>2</sup> La. R.S. 15:574.9 G provides in pertinent part:

G. (1)(a) Except as provided in Subparagraph (b) of this Paragraph, any offender who has been released on parole and whose parole supervision is being revoked under the provisions of this Subsection for his first technical violation of the conditions of parole as determined by the Board of Parole, shall be required to serve not more than ninety days without diminution of sentence or credit for time served prior to the revocation for a technical violation. The term of the revocation for the technical violation shall begin on the date the Board of Parole orders the revocation. Upon completion of the imposed technical revocation sentence, the offender shall return to active parole supervision for the remainder of the original term of supervision. The provisions of this Subsection shall apply only to an offender's first revocation for a technical violation.

(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to the following offenders:

(i) Any offender released on parole for the conviction of a crime of violence as defined in R.S. 14:2(B).

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**. (Emphasis added.)

This court has previously upheld the constitutionality of La. R.S. 15:571.5 and has rejected many of the arguments made by Menne herein. See Frederick v. Ieyoub, 99-0616 (La. App. 1st Cir. 5/12/00), 762 So.2d 144, writ denied, 2000-1811 (La. 4/12/01), 789 So.2d 581 (rejecting substantive due process and equal protection challenges to La. R.S. 15:571.5); **State v. Duncan**, 98-1730 (La. App. 1st Cir. 6/25/99), 738 So.2d 706, 709-710 (holding that loss of previously earned good time credit does not constitute multiple punishment for the same offense and therefore does not constitute double jeopardy); **Tauzier v. Cain**, 96-1934 (La. App. 1st Cir. 6/20/97), 696 So.2d 650 (rejecting ex post facto challenge to La. R.S. 15:571.5); and **Bancroft v. Louisiana Department of Corrections**, 93-1135 (La. App. 1st Cir. 4/8/94), 635 So.2d 738, 740 (rejecting arguments of duress, ex post facto violation and breach of contract). **Bancroft**, held that the granting of conditional release under diminution of sentence was the exercise of a lawful act as provided for in La. R.S. 15:571.5, and therefore cannot constitute duress. **Id.** Accordingly, we conclude that even accepting the allegations of Menne's pleadings as true, he has failed to state a cause of action in that he is not legally entitled to the relief sought. See Frederick, 762 So.2d at 149.

#### CONCLUSION

Accordingly, based on our review of the record, we conclude Menne failed to state a cause of action for which relief is available, and the district court properly dismissed Menne's petition for failure to state a cause of action. All costs associated with the appeal are assessed against plaintiff-appellant, Harvey Menne.

**AFFIRMED.**