

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 2580

HIEU NGUYEN

VERSUS

LOUISIANA BOARD OF PAROLE

Judgment rendered: SEP 11 2009

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Number: 568,913; Division: O (8)
The Honorable Wilson Fields, Judge Presiding**



**Hieu Nguyen
Kinder, LA**

**Counsel for Plaintiff/Appellant
In Proper Person**

**Louisiana Department of Corrections
William Kline
Baton Rouge, LA**

**Counsel for Defendant/Appellee
Louisiana Department of Corrections**

BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.

DOWNING, J.

Plaintiff/appellant, Hieu V. Nguyen, an inmate incarcerated at Allen Correctional Center in Kinder, Louisiana, appeals a judgment that dismissed his suit for failure to state a cause of action, which the trial court raised on its own motion. Mr. Nguyen's petition requested habeas relief challenging a revocation decision rendered by the Parole Board on March 27, 2007. In granting its own motion for No Cause of Action, the District Court ruled that Mr. Nguyen was precluded from seeking habeas relief in this matter because a revocation challenge based on due process allegations should have been raised in a request for judicial review. The judgment also proclaims that even though the judgment was rendered without prejudice, Mr. Nguyen was precluded from amending his petition.

Additionally, the Commissioner's recommendation explained that the face of the pleadings clearly indicate that he failed to timely file for judicial review under La. R.S. 15:574.11(D). The Commissioner's recommendation noted that Louisiana Revised Statutes 15:574.11(D) provides that "[p]etitions for review that allege a denial of a revocation hearing under the provisions of R.S. 15:574.9 shall be subject to a preemptive period of ninety days after the date of revocation by the Board of Parole." Mr. Nguyen's suit was filed in the 19th Judicial District Court on July 17, 2008; the Board of Parole rendered its final decision on March 27, 2007.

After a review of the record, we conclude that the district court did not err in dismissing Mr. Nguyen's suit upon its own motion for no cause of action. Accordingly, the judgment of the district court is affirmed.

The costs of these proceedings are assessed against the plaintiff/appellant, Hieu V. Nguyen. This summary disposition is rendered in accordance with Uniform Rules - - Courts of Appeal, Rule 2-16.2.

AFFIRMED