

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 1778

JAMES B. BOSTON

VERSUS

**WARDEN ALVIN JONES, WARDEN GUNTER
AND THE EAST CARROLL PARISH SHERIFF'S OFFICE**

RHP by JMM
JMM
JEK by JMM

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 575,422, Section 23
Honorable William A. Morvant, Judge Presiding**

**James B. Boston
Lake Providence, LA**

**Plaintiff-Appellant
In Proper Person**

**William Kline
Baton Rouge, LA**

**Attorney for
Defendant-Appellee
Louisiana Department of
Public Safety and Corrections**

BEFORE: PARRO, KUHN, AND McDONALD, JJ.

JUN 04 2010

Judgment rendered _____

PARRO, J.

James B. Boston, an inmate in the custody of the Louisiana Department of Public Safety and Corrections, appeals the dismissal, with prejudice, of his application for a writ of habeas corpus, based on a failure to state a cause of action.

In his application for a writ of habeas corpus, the inmate essentially claimed that the Louisiana Board of Parole (Board) violated his rights during the revocation process and he should have been eligible for a 90-day remand, rather than a full revocation. See LSA-R.S. 15:574.9(G). To properly assert his right of review of the Board's decision, a parolee is required to file a petition for judicial review in a district court, alleging that his right to a revocation hearing was denied or the procedural due process protections specifically afforded by LSA-R.S. 15:574.9 in connection with such a hearing were violated. See Leach v. Louisiana Parole Bd., 07-0848 (La. App. 1st Cir. 6/6/08), 991 So.2d 1120. No such petition for judicial review was filed in this case. Instead, the parolee chose to file an application for a writ of habeas corpus based on allegations that his continued confinement was unlawful. In the absence of a timely-filed petition for judicial review containing allegations sufficient to establish a right to appeal pursuant to LSA-R.S. 15:574.11, we are unable to consider the propriety of the Board's decision or the validity of the inmate's waiver of the final parole revocation hearing.

After a thorough review of the record and relevant law and jurisprudence, we find that the district court's reasons for judgment, as set forth in the commissioner's recommendation, adequately explain the decision. As the issue involves no more than an application of well-settled rules to a recurring fact situation, we affirm the judgment in accordance with URCA Rule 2-16.2(A)(2), (4), (5), (6), and (8). Furthermore, the inmate's request for an opportunity to amend his petition to state a cause of action is denied as such an action would be futile under the facts of this case. All costs of this appeal are assessed against the inmate-appellant.¹

AFFIRMED.

¹ Although the inmate's suit was brought in forma pauperis, the costs of an unsuccessful appeal may be assessed against him. See Hull v. Stalder, 00-2730 (La. App. 1st Cir. 2/15/02), 808 So.2d 829, 833 n.3; see also LSA-C.C.P. art. 5188.