

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA


COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1602

JAMES K. BELT

VERSUS

 N. BURL CAIN, WARDEN LOUISIANA STATE
PENITENTIARY; LIEUTENANT KENNY COLLINS,
MAJOR CHAD DAVIS, TROY PORET, JOSEPH
LAMARTINIÈRE AND DARRYL VANNOY

Judgment Rendered: MAR 25 2011

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 572,285

Honorable Kay Bates, Judge Presiding

James K. Belt
Angola, LA

Plaintiff-Appellant,
in Proper Person

Terri L. Cannon
Baton Rouge, LA

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

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

Plaintiff-Appellant, James K. Belt, an inmate in the custody of defendant-appellee, the Department of Public Safety and Corrections (the Department) appeals the district court's judgment reversing the department's decision. We affirm.

Belt filed an appeal of the Administrative Remedy Procedure (ARP) No. LSP 2008-2291, seeking review pursuant to LSA-R.S. 15:1171 et. seq. Belt claimed that while in his cell, his radio was taken by Lieutenant Collins without explanation and was never returned. Belt complains that his radio was taken without a confiscation or inventory sheet and without a confiscation hearing or notice thereof, in violation of his rights and the Department's policies and rules.

A judgment signed by the trial court on June 4, 2010, adopted the written recommendation of the commissioner and reversed the Department's decision as manifestly erroneous and in violation of the Belt's due process rights. The court further ordered that the Department return the radio to Belt, find him a comparable radio, or pay him forty dollars for the radio at the option of the petitioner. Belt appeals the judgment of the trial court and outlines two arguments, both of which contend that the Commissioner's Report and the trial court's adoption of the report were biased and, therefore, he was denied due process.

The Commissioner's Report noted:

Given that there is no description of the radio confiscated, no record of adequate prehearing written notice to the Petitioner of the reason for confiscation, and no showing in the record that the particular radio confiscated violated any particular rule or policy, I find the Department's decision to uphold the denial of relief to be manifestly erroneous and in violation of the Petitioner's rights and the Department's own rules.

* * *

I find that the omissions that require reversal herein are due to inexcusable oversight by prison personnel in establishing and/or maintaining an adequate administrative record in support of their actions and findings in this confiscation.

The Commissioner's Report was thorough and well-reasoned, and the commissioner found in favor of Belt. Belt contends that the Commissioner was biased because a hearing was not set on his motion to compel discovery. The motion contained a hand written note signed by the Commissioner that stated "no order attached & [federal] rules [of procedure] don't apply to an appeal." Belt also argues that it was an abuse of discretion for the judge to award forty dollars as the value of the radio.

After a thorough review of the record, we find no error in the trial court's judgment herein.

CONCLUSION

Accordingly, Belt's assignments of error are without merit, and the ruling of the trial court is affirmed. All costs associated with this appeal are assessed against plaintiff-appellant, James K. Belt. We issue this memorandum opinion in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1B.

AFFIRMED.