

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 1800

JAMIE COLLINS

VERSUS

**LA. BOARD OF PAROLE ET AL.
JOHN WEBRE**

Judgment Rendered: March 26, 2010

On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge
Trial Court No. 569,992

Honorable Janice Clark, Judge Presiding

Jamie Collins
Dequincy, LA

Appellant
Pro Se

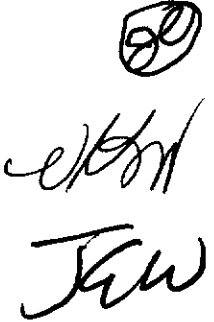
James D. Buddy Caldwell
Attorney General
Baton Rouge, LA

Counsel for Appellee
Louisiana State Parole Board

Patricia W. Wilton
Assistant Attorney General
Baton Rouge, LA

Wendell C. Woods
Baton Rouge, LA

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

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HUGHES, J.

In this case an inmate in the custody of the Department of Public Safety and Corrections appeals the dismissal of his petition for judicial review challenging his parole revocation by the Louisiana Parole Board (the Board.) For the reasons that follow, we affirm.

FACTS

Collins was released on parole on June 26, 2005. After his release, a warrant was issued and he was again arrested on October 7, 2005 due to alleged parole violations. Both a preliminary hearing and a final revocation hearing were held. The Board revoked Mr. Collins's parole on December 1, 2005.

On August 21, 2008 Mr. Collins filed a petition for judicial review of the Board's decision, alleging that the decision was "faulty" and that he was not allowed to present witnesses on his behalf at the revocation hearing, an alleged violation of his due process rights. The Commissioner, on her own motion, issued a rule to show cause why the appeal should not be dismissed insofar as it was not filed within 90 days of the final revocation hearing, pursuant to LSA-R.S. 15:574.11. Collins responded by presenting a "Notice of Filing" of a suit numbered 539,284 and dated December 30, 2005. Specifically, Collins argued that he did timely appeal the Board's decision, but that the first suit he filed had been lost, abandoned, or not recognized.¹

On July 14, 2009 judgment was signed dismissing Collins's suit as perempted under LSA-R.S. 15:574.11(D), but specifically reserving

¹ In response to Collins's defense, the Commissioner confirmed that the earlier suit had indeed been filed, and issued a second rule to show cause why the two cases should not be consolidated. The record indicates that upon review of the record of the first-filed suit, the Commissioner ascertained that after the petition was filed by Collins, a cost order was issued to Collins by the court, but no payment was ever received and no pauper motion was filed. As such, no further action had been taken in that suit. On July 24, 2009 an order was issued maintaining the State's objection to the consolidation of the suits.

Collins's right to proceed with litigation of the earlier-filed suit. Collins appeals and seeks review of the dismissal of the second suit.

DISCUSSION

Louisiana Revised Statutes 15:574.11 reads:

A. Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint, and the granting, conditions, or revocation of parole rest in the discretion of the Board of Parole. No prisoner or parolee shall have a right of appeal from a decision of the board regarding release or deferment of release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole supervision or discharge from parole before the end of the parole period, or the revocation or reconsideration of revocation of parole, except for the denial of a revocation hearing under R.S. 15:574.9.

B. Venue in any action in which an individual committed to the Department of Public Safety and Corrections contests any action of the board shall be in the parish of East Baton Rouge. Venue in a suit contesting the actions of the board shall be controlled by this Part and R.S. 15:571.15 and not the Code of Criminal Procedure, Title XXXI-A, Post Conviction Relief, or Title IX, Habeas Corpus, regardless of the captioned pleadings stating the contrary.

C. The district court shall have appellate jurisdiction over pleadings alleging a violation of R.S. 15:574.9. The review shall be conducted by the court without a jury and shall be confined to the revocation record. Within thirty days after service of the petition, or within further time allowed by the court, the Board of Parole shall transmit to the reviewing court the original or a certified copy of the entire revocation record of the proceeding under review. The review shall be limited to the issues presented in the petition for review. The discovery provisions under the Code of Civil Procedure applicable to ordinary suits shall not apply in a suit for judicial review under this Subsection. The court may affirm the revocation decision of the Board of Parole or reverse and remand the case for further revocation proceedings. An aggrieved party may appeal a

final judgment of the district court to the appropriate court of appeal.

D. Petitions 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. When revocation is based upon the conviction of a new felony while on parole, the ninety-day preemptive period shall commence on the date of final judgment of the new felony. Petitions for review filed after this preemptive period shall be dismissed with prejudice. Service of process of petitions for review shall be made upon the chairman of the Board of Parole or his designee. (Footnote omitted.)

A review of the relevant statutory authority and jurisprudence reveals that to properly assert his right to review of the Board's decision, a parolee is required to file a petition for judicial review in the 19th Judicial District Court, alleging that either his right to a revocation hearing under LSA-R.S. 15:574.9 was denied, or that his procedural due process protections afforded by that statute were violated. See LSA-R.S. 15:574.11(C); **Madison v. Ward**, 2000-2842, p. 6 n. 7 (La. App. 1 Cir. 7/3/02), 825 So.2d 1245, 1251, n. 7 (en banc), **Leach v. Louisiana Parole Bd.**, 2007-0848, p. 7 (La. App. 1 Cir. 6/6/08), 991 So.2d 1120, 1124, *writ denied*, 2008-2385 (La. 8/12/09), 17 So.3d 378, *and writ denied*, 2008-2001 (La. 12/18/09), 23 So.3d 947, **Cutler v. Parole Bd.**, 2009-1268, p. 1 (La. App. 1 Cir. 2/12/2010), 2010 WL 502987 (unpublished opinion). There is no other basis for an appeal. LSA-R.S. 15:574.11(A). In the limited, specified circumstance that an appeal is allowed, it must be taken within ninety days. LSA-R.S. 15:574.11(D).

Collins's petition was filed nearly three years after the revocation of his parole. After a review of the record, we find no error in the trial court's

dismissal of this second petition. The trial court judgment is affirmed.² All costs of this appeal are assessed to appellant, Jamie Collins.

AFFIRMED.

² We specifically note the language of the judgment preserving Collins's right to pursue his appeal in the first suit that was timely filed.