

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2010 CA 1008**

**JEREMY M. BODDYE**

**VERSUS**

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY  
AND CORRECTIONS, ET AL.**

Judgment Rendered: December 22, 2010

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On Appeal from the 19<sup>th</sup> Judicial District Court  
In and for the Parish of East Baton Rouge  
Docket No. 578,127, Section 23

Honorable William A. Morvant, Judge Presiding

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Department of Public Safety  
and Corrections

Jeremy M. Boddye  
DeQuincy, LA

Plaintiff/Appellee  
In Proper Person

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**BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.**

*Jeremy M. Boddye*

*RMB*

**HUGHES, J.**

This is an appeal of a judgment of the 19<sup>th</sup> Judicial District Court overturning a decision of the Department of Public Safety and Corrections (the DPSC). For the following reasons, we remand this matter to the district court for the specific purpose of remanding this matter to the administrative level of the DPSC to allow the introduction of the sentencing transcript as evidence into the administrative record.

**FACTS AND PROCEDURAL HISTORY**

Appellee Jeremy Boddye was an inmate in the custody of the DPSC when the following offenses were committed. On August 2, 2006 Mr. Boddye was arrested and charged with burglary, a violation of LSA-R.S. 14:62, and illegal possession of stolen things, a violation of LSA-R.S. 14:69. Mr. Boddye pled no contest to both charges pursuant to two plea agreements and on January 21, 2009 Mr. Boddye was sentenced to five years for each violation, to run consecutively. Mr. Boddye remained in custody for a total of 826 days prior to sentencing.

Dissatisfied with the DPSC's calculation of his release date, Mr. Boddye instituted an action under the Corrections Administrative Remedy Procedure (CARP), LSA-R.S. 15:1171, *et seq.*, arguing that he was entitled to jail credits for the time he served prior to his sentencing, on both sentences. When he was denied relief at both administrative steps, Mr. Boddye filed for judicial review of the DPSC decision. After the submission of briefs and a hearing, the commissioner of the 19<sup>th</sup> JDC issued a recommendation that the DPSC's decision be overturned.<sup>1</sup> A judgment was signed adopting the recommendation of the commissioner and reversing the DPSC's decision. The DPSC appeals.

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<sup>1</sup> The offices of the commissioner of the 19<sup>th</sup> JDC were created by LSA-R.S. 13:711. The commissioners hear and recommend the disposition of criminal and civil proceedings arising out of the incarceration of inmates. LSA-R.S. 13:713. A commissioner's written findings and recommendations are submitted to a district court judge who may accept, reject, or modify them. LSA-R.S. 13:713.

## LAW AND ANALYSIS

Judicial review of an adverse agency decision is available under the CARP, but is “confined to the record”, as developed by the administrative proceedings. LSA-R.S. 15:1177(A)(5). A reviewing court may only reverse or modify an agency decision if substantial rights of the appellant are prejudiced because the administrative findings, inferences, conclusions, or decision are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the agency’s statutory authority;
- (3) made upon unlawful procedure;
- (4) affected by error of law;
- (5) arbitrary, capricious, or an abuse of discretion; or
- (6) manifestly erroneous.

See LSA-R.S. 15:1177(A)(9); **Pacificorp Capital, Inc. v. State Through Div. of Admin., Office of State Purchasing**, 92-1729, p. 4-5 (La. App. 1 Cir. 8/11/94), 647 So.2d 1122, 1125, writ denied, 94-2315 (La. 11/18/94), 646 So.2d 387.

The district court has no authority to accept evidence or testimony at the hearing on review. **Curry v. Cain**, 05-2251, p. 6 (La. App. 1 Cir. 10/6/06), 944 So.2d at 635, 639; see also **McDowell v. Taylor**, 99-1587, p. 5 (La. App. 1 Cir. 6/23/00), 762 So.2d 1149, 1151. However, if the district court determines that additional evidence is needed, it does have the authority to order the addition of such evidence at the administrative level. Thus, the district court must remand the case to the agency for the evidence to be introduced. See LSA-R.S. 15:1177(A)(4) & (A)(8); **Curry v. Cain**, 944 So.2d at 639.

It is well settled that the determination of the sentence a defendant is to serve, and what, if any, conditions are to be imposed on that sentence, is made by the trial judge, not the defendant’s custodian. The custodian’s obligation is to see that the sentence imposed is the sentence served. **Blair v. Stalder**, 99-1860, p. 9 (La. App. 1 Cir. 1/31/01), 798 So.2d 132, 139; **State ex. rel. Pierre v. Maggio**, 445 So.2d 425, 426 (La. 1984). Under this court’s prior jurisprudence regarding jail credit computation disputes, the court looks to the sentencing minutes and

sentencing transcripts to determine the intent of the sentencing judge. See Williams v. Cooper, 05-2360 (La. App. 1 Cir. 10/6/06), 945 So.2d 48. Moreover, it is well established that in cases where there is a discrepancy between a minute entry and a transcript, the transcript prevails. **State v. Lynch**, 441 So.2d 732 (La. 1983).

In the instant case, the DPSC argues that the minute entry is unclear as to the sentencing judge's intent and could be interpreted in its favor to order that Mr. Boddye only receive credit for time served on one of the two consecutive sentences. Mr. Boddye argues that the sentencing transcript, attached to his brief to the commissioner and not challenged as to accuracy, resolves any doubt that the trial judge intended that Mr. Boddye receive credit for time served on *each* of the two sentences. This argument was accepted by the commissioner and it appears that it may ultimately prove successful. However, a review of the record reveals that the sentencing transcript was not introduced into the administrative record. The commissioner, therefore, erred in considering the transcript on review. Instead, the commissioner should have remanded the matter to the agency for the limited purpose of introducing that evidence pursuant to LSA-R.S. 15:1177(A)(4). We therefore vacate the judgment and remand Mr. Boddye's appeal to the district court with instructions that this action be remanded to the agency for the limited purpose of introducing the sentencing transcripts as evidence into the administrative record.

#### **CONCLUSION**

For the reasons assigned herein, the judgment of the district court is vacated and this matter is remanded to the district court with instructions to remand to the agency for the limited purpose of introducing the sentencing transcripts as evidence.

**VACATED AND REMANDED.**