

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 1819

JIMMY SEE

VERSUS

**STATE OF LOUISIANA
TIM WILKINSON, WARDEN,
WINN CORRECTIONAL INSTITUTE**

Judgment Rendered: March 27, 2009

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Case No. 562,226**

The Honorable Donald R. Johnson, Judge Presiding

**Jimmy See
Pineville, Louisiana**

**Plaintiff/Appellant
In Proper Person**

**William Kline
Baton Rouge, Louisiana**

**Defendant/Appellee
Department of Corrections**

BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

Handwritten signature or initials in the left margin, possibly reading 'J. See' or similar.

GAIDRY, J.

In this case, a prisoner is appealing a trial court judgment dismissing his suit for judicial review with prejudice. We affirm.

DISCUSSION

Plaintiff, Jimmy See, is a prisoner in the custody of the Louisiana Department of Public Safety and Corrections. See was previously released on parole prior to completion of his sentence, but his parole was later revoked after he was arrested on several felonies. See filed a petition captioned as a writ of habeas corpus; however, in his petition, he complains of his parole revocation. A screening judgment by the district court adopted the written recommendation of the Commissioner and dismissed See's petition with prejudice for failure to state a cause of action. The Commissioner's screening report notes that See does not allege a denial of a revocation hearing under La. R.S. 15:574.9 in this suit; his suit alleging a violation of 15:574.9 was considered under a separate docket number. Rather, See seems to be complaining of a denial of due process in the parole revocation proceeding. Louisiana Revised Statutes 15:574.11(A) states that "No prisoner or parolee shall have a right of appeal from a decision of the board regarding . . . the revocation or reconsideration of revocation of parole, except for the denial of a revocation hearing under R.S. 15:574.9." This court has held that a pleading challenging the actions of the parole board *other than the denial of a revocation hearing*, whether styled as a writ of habeas corpus or captioned in some other fashion, should be dismissed by the district court, and the order of dismissal would be reviewable by the Court of Appeal. *Madison v. Ward*, 2000-2842 (La.App. 1 Cir. 7/3/02), 825 So.2d 1245. When the petition alleges the denial of a revocation hearing, it is subject to a preemptive period of ninety days after the date of revocation,

and petitions for review filed after this time are to be dismissed with prejudice. La. R.S. 15:574.11(D). See's petition was filed more than two years after the revocation of his parole. After a review of the record, we find no error in the district court's judgment dismissing See's petition for failure to state a cause of action.

DECREE

The judgment of the trial court dismissing prisoner Jimmy See's petition with prejudice is affirmed. Costs of this appeal are assessed to plaintiff, Jimmy See.

AFFIRMED.