

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2011 CA 0293**

**JONAS WILLIAMS**

**VERSUS**



**LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONS, LOUISIANA BOARD OF PAROLE,  
ELAYN HUNT CORRECTIONAL CENTER, ET AL.**

Judgment Rendered: SEP 14 2011

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On Appeal from the 19th Judicial District Court  
In and for the Parish of East Baton Rouge  
Docket No. 595260, Division "C"

The Honorable Timothy Kelley, Judge Presiding

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Jonas Williams  
St. Gabriel, La.

Appellant  
Pro Se

William Kline  
Baton Rouge, La.

Counsel for Defendant/Appellee  
Louisiana Department of Corrections

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**BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.**

## **HUGHES, J.**

Jonas Williams, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the DPSC), appeals a judgment of the 19<sup>th</sup> Judicial District Court that dismissed his application for a writ of habeas corpus against the DPSC, the Louisiana Board of Parole and Probation, Elayn Hunt Correctional Center, and others, based on his failure to state a cause of action. Based on our review, we affirm the judgment.

### **FACTS AND PROCEDURAL HISTORY**

On November 27, 1984 Mr. Williams pleaded guilty to charges of attempted second degree murder, aggravated battery, and simple escape. Mr. Williams was sentenced to 25 years, 10 years, and 6 months, respectively, with the sentences to run concurrently. In accordance with those sentences, his original full-term release date was September 4, 2010. However, on January 29, 1996 Mr. Williams elected to earn double good time in lieu of incentive wages, pursuant to LSA-R.S. 15:571.4 and on May 13, 2000, Mr. Williams was released due to diminution of sentence “as if released on parole.” He was placed under parole supervision for the remainder of the original full term of his sentence, pursuant to LSA-R.S. 15:571.5. Under that statute, if the released person violates a condition of parole, the Parole Board can revoke the release and recommit the person to custody for the remainder of the original full term of his sentence.

Mr. Williams remained at liberty under parole supervision until he was arrested in Texas for the felony of evading arrest with a motor vehicle on November 3, 2008. On December 4, 2008, the Louisiana Department of Probation and Parole issued a warrant for Mr. Williams due to his being convicted of a new felony while on parole. After serving his sentence in Texas, he was returned to Louisiana on October 8, 2009, his parole was

revoked, and a new full-term release date of July 12, 2019 was calculated for him.

After being advised of the new full-term release date, Mr. Williams filed an application for a writ of habeas corpus in the 19<sup>th</sup> Judicial District Court, contending that his original sentences had been unlawfully increased and/or extended. Essentially, Mr. Williams seeks credit on his 25-year sentence for the time that he spent at liberty on parole, citing the language of the newly amended and re-enacted LSA-R.S. 15:571.5(C), which reads:

C. If such person's parole is revoked by the parole board for violation of its terms of parole, the person shall be recommitted to the department for the remainder of the original full term, **subject to credit for time served for good behavior while on parole.** (Emphasis added.)

Pursuant to the screening requirements of LSA-R.S. 15:1178(B) and 15:1188(A), Mr. Williams's petition was assigned to a commissioner at the district court to determine if the petition stated a cognizable claim or if the petition, on its face, was frivolous, malicious, or failed to state a cause of action, or sought monetary damages from a defendant who was immune from liability for such damages. After completing the screening review, the commissioner issued a report recommending dismissal, with prejudice, because the petition failed to state a cause of action.

After review, the district court signed a judgment on November 29, 2010, adopting the written recommendation of the commissioner and dismissed the petition, with prejudice, at Mr. Williams's costs, for failure to state a cause of action. Mr. Williams appeals the judgment, contending that the commissioner did not address his claims or misinterpreted the claims in his application. On appeal, Mr. Williams alleges the following "questions of law":

1. That the district court erred in denying his application for writ of habeas corpus based on the commissioner's recommendation; and
2. That the commissioner erred in recommending the denial of his application for writ of habeas corpus "based on allegations not raised" by him.

In brief to this court, Mr. Williams also re-urges the six original assignments of error set forth in his application for writ of habeas corpus:

1. That the DPSC has no authority to extend the duration of his sentence;
2. That the DPSC has no authority to alter his sentence;
3. That RS-LSA 15:571.5 is a retrospective law that violates the ex post facto clause by abrogating LSA-R.S. 15:571.3 and is in breach of his contract;
4. That LSA-R.S. 15:571.5 is ambiguous;
5. That LSA-R.S. 15:571.5 is unenforceable because it does not contain any penalty provisions; and
6. That LSA-R.S. 15:571.3 does not mandate the signing of LSA-R.S. 15:571.5 as a criteria or requisite to earning diminution of sentence.

### LAW AND ANALYSIS

Addressing Mr. Williams's first two assignments of error, we note that the legislature amended and re-enacted LSA-R.S. 15:571.5(C), effective August 15, 2010, to provide for the earning of good time credit while at liberty on parole even where the parole is revoked for a violation of its terms. However, Mr. Williams's parole was violated on November 3, 2008 and thus falls under the prior version of LSA-R.S. 15:571.5(C) which had no such provision. The prior version of LSA-R.S. 15:571.5(C), in effect at the time of Mr. Williams's revocation, read:

C. Upon revocation of the person's release upon diminution of sentence by the parole board, the person shall be recommitted to the Department of Corrections for the remainder of the original full

term. No further diminution of sentence for good behavior shall be allowed.

This court has previously analyzed the amendment of LSA-R.S. 15:571.5(C) and concluded that the change does not apply retroactively because it is a substantive amendment. “[I]t represents a distinct change in the rights and obligations of the parties by allowing credit for good time spent while on parole where no right had previously existed.” **Rochelle v. James M. Leblanc**, 10-1901 (La. App. 1 Cir. 5/6/11), ---So.3d ---. See also **Landry v. Baton Rouge Police Department**, 08-2289, pp. 11-12 (La. App. 1 Cir. 5/8/09), 17 So.3d 991, 998.

Thus, because the amendment is substantive, and a substantive change in the law cannot be applied retroactively, Mr. Williams is not entitled to the relief he seeks on appeal on that basis. See LSA-C.C. art. 6, LSA-R.S. 1:2.

Moreover, to the extent that Mr. Williams’s remaining assignments of error challenge the statute’s constitutionality and contend that the statute is vague or ambiguous, or is in violation of the ex post facto clause and in breach of his “contract,” the jurisprudence has previously upheld the constitutionality and applicability of LSA-R.S. 15:571.5(C) under similar challenges. **Frederick v. Ieyoub**, 99-0616 (La. App. 1 Cir. 5/12/00), 762 So.2d 144, writ denied, 00-1811 (La. 4/12/01), 789 So.2d 581 (upholding the statute’s constitutionality and rejecting substantive due process and equal protection challenges to LSA-R.S. 15:571.5); **Howard v. Louisiana Board of Probation and Parole**, *consolidated with* **Howard v. Louisiana Department of Corrections**, 90-1134 and 90-1135 (La. App. 1 Cir. 10/18/1991) 589 So.2d 534, writ denied 91-2558 (La. 11/22/1991), 590 So.2d 87 (clearly analyzing and distinguishing the language in LSA-R.S. 15:571 “as if released on parole” versus the language “on parole” so as to

make clear that the language is not vague or ambiguous); and **Bancroft v. Louisiana Department of Corrections**, 93-1135 (La. App. 1 Cir. 4/8/94), 635 So.2d 738 (rejecting arguments of duress, ex post facto violation, and breach of contract as applied to LSA-R.S. 15:571).

In conclusion, Mr. Williams's argument that LSA-R.S. 15:571 is unenforceable because it does not contain any penalty provisions is meritless. A simple reading of the statute clearly indicates that should a person released under diminution of sentence violate a condition imposed by the parole board, the board shall determine whether the release should be revoked. Upon revocation of the person's release, the person shall be recommitted to the DPSC **for the remainder of the original full term**. As such, the penalty for a person's failure to comply with the terms of his release under diminution of sentence is revocation of his release and recommitment to the DPSC for the remainder of his original full-term sentence.

Accordingly, after review herein, we find no error in the judgment of the district court, dismissing Mr. Williams's claims with prejudice.

### **CONCLUSION**

The judgment of the district court dismissing Mr. Williams's claims is affirmed. All costs of this appeal are assessed to the appellant, Mr. Jonas Williams.

**AFFIRMED.**