

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2010 CA 1624**

**JOSEPH FOSTER**

**VERSUS**

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS  
AND DAVID WADE CORRECTIONAL CENTER**

**Judgment Rendered: MAR 25 2011**

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On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 588,308

Honorable Wilson Fields, Judge Presiding

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Joseph V. Foster, Jr.  
Elayn Hunt Correctional Center  
St. Gabriel, Louisiana

Plaintiff/ Appellant  
In Proper Person

William Kline  
Baton Rouge, Louisiana

Counsel for Defendant/Appellee  
Louisiana Department of  
Corrections

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**BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.**

*Handwritten signatures:*  
JVC  
WKM  
JMF

**McCLENDON, J.**

Joseph Foster, Jr., an inmate in the custody of the Department of Public Safety and Corrections (DPSC), appeals a judgment of the district court that dismissed his petition for judicial review for failing to exhaust administrative remedies. For the reasons that follow, we affirm.

**DISCUSSION**

Mr. Foster alleges that upon intake at the David Wade Correctional Center (DWCC), some of his personal property was discarded by DWCC officers.<sup>1</sup> Mr. Foster avers that he subsequently filed an administrative remedy action seeking compensation for the items discarded, but asserts that no number was ever assigned and/or his action was never acknowledged in any step of the administrative process. Thereafter, he filed a petition for judicial review in the district court, naming DPSC and DWCC as defendants.

Pursuant to the screening requirements in LSA-R.S. 15:1178 and 15:1188, the petition for judicial review was assigned to a commissioner, who noted that Mr. Foster "acknowledges that he has not obtained a final administrative decision, and yet, he seeks from this Court relief on the merits of the apparently incomplete administrative record." The commissioner recommended that the petition be dismissed, without prejudice, for lack of subject matter jurisdiction. Following Mr. Foster's traversal to the screening report, the district court adopted the commissioner's recommendation and dismissed Mr. Foster's petition without prejudice. Mr. Foster has appealed, seeking review of the district court's ruling dismissing his petition.

Louisiana Revised Statutes 15:1171(B) provides that an administrative remedy procedure is the exclusive remedy for complaints and grievances by adult or juvenile offenders, including but not limited to "any and all claims seeking monetary, injunctive, declaratory, or any other form of relief authorized by law." Moreover, the administrative remedy process must be completed

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<sup>1</sup> Mr. Foster asserts that he is serving two life sentences, plus ninety years, consecutively, but no further details are provided in the record.

before review can be sought in district court. In this regard, LSA-R.S. 15:1172(C) provides:

If an offender fails to timely...pursue his administrative remedies within the deadlines established in Subsection B of this Section, his claim is abandoned, and any subsequent suit asserting such a claim shall be dismissed with prejudice. **If at the time the petition is filed the administrative remedy process is ongoing but has not yet been completed, the suit shall be dismissed without prejudice.** (Emphasis added.)

Absent exhaustion of administrative remedies, LSA-R.S. 15:1172(C) requires dismissal of an inmate's petition for review.

Mr. Foster contends that he should not be precluded from seeking review in the district court when the defendants have failed to answer the complaint in the administrative proceedings. We note that Mr. Foster initiated a claim for lost property on September 2, 2009, but the record does not reflect that DPSC has acted and no explanation is contained in the record as to why no action has been taken. We also note that the DPSC is required to follow its own guidelines to ensure the prompt and fair administration of justice. See **Sims v. Wackenhut Health Services, Inc.**, 97-1147 (La.App. 1 Cir. 2/20/98), 708 So.2d 1140, writ denied, 98-0747 (La. 5/1/98) 718 So.2d 417. However, as pointed out by the commissioner, Mr. Foster's "remedy is to file an application for mandamus to force the proper administrative official to respond." See LSA-C.C.P. arts. 3861 through 3866. Sitting in its capacity as a court of administrative review, the district court has no jurisdiction to consider the merits of an inmate's petition for judicial review absent an adverse decision by DPSC.

For the foregoing reasons, the April 12, 2010 judgment of the district court dismissing Mr. Foster's petition for judicial review is affirmed. Costs of this appeal are assessed against Joseph Foster, Jr.

**AFFIRMED.**