

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0967

JOSEPH MCKENDALL

VERSUS

LOUISIANA PAROLE BOARD

**Judgment rendered February 11, 2011.**

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Appealed from the  
19th Judicial District Court  
in and for the Parish of East Baton Rouge, Louisiana  
Trial Court No. 582,256  
Honorable Kay Bates, Judge

\* \* \* \* \*

JOSEPH MCKENDALL  
ANGIE, LA

WILLIAM KLINE  
BATON ROUGE, LA

PLAINTIFF-APPELLANT  
IN PROPER PERSON

ATTORNEY FOR  
DEFENDANT-APPELLEE  
LOUISIANA DEPARTMENT  
OF CORRECTIONS

\* \* \* \* \*

**BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.**

**PETTIGREW, J.**

In this case, a prisoner is appealing a trial court judgment dismissing his suit for judicial review. For the reasons that follow, we affirm.

**DISCUSSION**

According to the record, plaintiff, Joseph McKendall, a prisoner in the custody of the Louisiana Department of Public Safety and Corrections, was previously released on parole in August 2006 prior to completion of his sentence. McKendall's parole was later revoked on March 18, 2008. On August 26, 2009, McKendall filed a petition captioned as an application for writ habeas corpus relief; however, in his petition, he challenged his parole revocation. A screening judgment by the trial court dated November 9, 2009, adopted the written recommendation of the Commissioner and dismissed McKendall's petition, with prejudice, for failure to state a cause of action for habeas relief and based on peremption pursuant to La. R.S. 15:574.11(D).<sup>1</sup> The Commissioner's screening report noted as follows:

[McKendall] seeks release on parole following his revocation by the Board in March 2008. The only issue before the Court is whether the appeal is timely filed such that appellate jurisdiction attaches to this Court. Without addressing the merits, this Court is required to consider its own subject matter jurisdiction sua sponte. All revocation complaints must be heard by this Court in its appellate capacity, and [La.] R.S. 15:574.11 sets a 90-day peremptory time limit on all revocation appeals. Peremptory time limits may not be suspended or interrupted for any reason.

I suggest that the petition confirms that this appeal is clearly untimely, and thus, this Court lacks subject matter jurisdiction.

[McKendall] asserts that his parole was revoked on March 18 2008. Pursuant to [La.] R.S. 15:574.11, [McKendall] is required to file his appeal within 90 days of the final revocation decision. The 90-day time limit is peremptory and therefore, not subject to suspension or interruption.

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<sup>1</sup> Louisiana Revised Statutes 15:574.11(D) provides, in pertinent part, as follows:

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 peremptive 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 peremptive period shall commence on the date of final judgment of the new felony. Petitions for review filed after this peremptive period shall be dismissed with prejudice.

In accordance with the Court's responsibility to consider sua sponte its own appellate jurisdiction over a matter, and after consideration of the petition, and the law applicable, for reasons stated hereinabove, I recommend dismissal without service and with prejudice at [McKendall's] costs because he does not state a cause of action for habeas relief and this cause of action, considered as a revocation appeal is preempted pursuant to [La.] R.S. 15:574.11D. [Footnotes omitted.]

This appeal by McKendall followed. After a review of the record, we find no error in the trial court's judgment herein. McKendall's petition was filed more than one year after the revocation of his parole and is clearly preempted pursuant to La. R.S. 15:574.11(D). Dismissal with prejudice was appropriate.<sup>2</sup>

### **DECREE**

The judgment of the trial court dismissing Joseph McKendall's suit with prejudice is affirmed. All costs associated with this appeal are assessed against appellant, Joseph McKendall.

**AFFIRMED.**

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<sup>2</sup> Because we conclude, as did the trial court, that McKendall's petition was untimely and, thus, preempted pursuant to La. R.S. 15:574.11(D), we preterm consideration of the issues raised by McKendall in the instant appeal.