

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA


COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1617

KEVIN MARS

VERSUS



LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONS, WAYNE B. KENNEDY, AND LYN  
MCCLOUD, ROBERT C. TANNER, WARDEN, JAMES M.  
LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: MAR 25 2011

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On Appeal from the  
19th Judicial District Court,  
In and for the Parish of East Baton Rouge,  
State of Louisiana  
Trial Court No. 589,975

Honorable R. Michael Caldwell, Judge Presiding

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Kevin Mars  
Angie, LA

Plaintiff-Appellant,  
in Proper Person

William Kline  
Baton Rouge, LA

Attorney for Defendant-Appellee,  
Louisiana Department of Corrections

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BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

## HIGGINBOTHAM, J.

This is an appeal from a judgment dismissing a prisoner's suit with prejudice for failure to state a cause of action. For the following reasons, we affirm.

### DISCUSSION

According to the record, plaintiff, Kevin Mars, a prisoner in custody of the Louisiana Department of Public Safety and Corrections ("DPSC") filed for judicial review of DPSC's decision rendered under Disciplinary Board Appeal No. RCC-2009-470 where he was convicted of violating the following rules: #3 (Defiance), #5 (Aggravated Disobedience), and #28 (Aggravated Work Offense).<sup>1</sup> Mars was sentenced to a suspended custody change and loss of yard, recreation, radio, and television privileges. A screening judgment by the trial court, dated June 18, 2010, adopted the recommendation of the Commissioner and dismissed plaintiff's suit with prejudice for failure to state a cause of action.<sup>2</sup> The court also imposed a strike in accordance with LSA-R.S. 15:1187 because Mars failed to state a cause of action.

The Commissioner's Screening recommendation stated as follows:

[Louisiana Revised Statute] 15:1177(A)(9) only authorizes this Court to intervene in the decision of the Department of Corrections if [Mars's] "substantial rights" have been violated. [Mars] has no constitutional or substantial right to any particular housing classification, job classification or recreational hobby craft.

"As long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the constitution, the due process clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight."

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<sup>1</sup> In his brief, Mars complained that he was given orders in violation of his medical duty status. The Commissioner correctly pointed out in his report that a complaint regarding a violation of his medical duty status could be raised through the Administrative Remedy Procedure.

<sup>2</sup> On an exception of no cause of action, the court must determine whether the law affords any remedy to the claimant if he proves the factual allegations in the petition at trial. **United Teachers of New Orleans v. State Bd. of Elementary and Secondary Educ.**, 07-0031 (La. App. 1st Cir. 3/26/08), 985 So.2d 184, 193. The standard of review is *de novo*. **Kinchen v. Livingston Parish Council**, 07-0478 (La. 10/16/07), 967 So.2d 1137, 1138.

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In cases such as this one, where the potential punishment only affects a custody classification and not eventual release, due process merely requires that the prisoner be allowed to give his version of the incident. [Mars] fails to allege that the penalty imposed by the disciplinary board constitutes an atypical deprivation of a substantial right.... The Commissioner finds [Mars] has failed to state a cause of action for judicial review in this matter... [T]he defect in this petition cannot be removed by amendment. (Citations omitted.)

This appeal by Mars followed. After thorough review of the record, we find no error in the trial court judgment entered herein.

### **DECREE**

Therefore, the trial court judgment recognizing and granting the peremptory exception raising the objection of no cause of action and dismissing Mars's suit, is affirmed. All costs associated with this appeal are assessed against plaintiff, Kevin Mars. We issue this memorandum opinion in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1B.

**AFFIRMED.**