

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1942

KEVIN SANTIAGO

VERSUS

JAMES LeBLANC, SECRETARY  
DEPARTMENT OF CORRECTIONS & RISK REVIEW PANEL  
STATE OF LOUISIANA

Judgment Rendered: May 7, 2010

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Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Trial Court Number 565,181

Honorable William Morvant, Judge

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Kevin Santiago  
Angola, LA

In Proper Person  
Plaintiff – Appellant

William Kline  
Baton Rouge, LA

Attorney for  
Defendant – Appellee  
James LeBlanc, Secretary  
Dept. of Corrections & Risk  
Review Panel, State of La.

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BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WELCH, J.

Kevin Santiago, a prisoner in the custody of the Department of Public Safety and Corrections, appeals a judgment in which the district court, on its own motion, granted an exception of no cause of action in favor of defendant, James LeBlanc, Secretary of the Department of Corrections and the Louisiana Risk Review Panel, thereby dismissing this petition for judicial review. We affirm.

### **BACKGROUND**

Santiago, an inmate housed at the Louisiana State Penitentiary at Angola, filed this petition for a writ of mandamus, seeking to have the district court order the Department of Corrections to provide him with a hearing before the Louisiana Risk Review Panel pursuant to La. R.S. 15:308. Louisiana Revised Statutes 15:308 provides for the retroactive application of ameliorative penalty provisions to those inmates sentenced prior to 2001 for certain crimes and pursuant to certain sentencing provisions, and gives those inmates, whose circumstances would be ameliorated by the retroactive application of the penalty provisions, the right to apply to the Louisiana Risk Review Panel pursuant to La. R.S. 15:574.22.

Santiago alleged that he had been sentenced under La. R.S. 15:529.1(A)(1)(b)(ii) and (c)(ii), one of the enumerated provisions in La. R.S. 15:308, prior to June 15, 2001, and was eligible by virtue of La. R.S. 15:308 to apply to the Risk Review Panel for a reduced sentence. He insisted that La. R.S. 15:308 mandated the retroactive application of the more lenient penalties; however, the Department denied all persons sentenced under La. R.S. 15:574.22 the opportunity to go before the Risk Review Panel for consideration.

In a preliminary screening order, the Commissioner found that Santiago failed to state a cause of action for mandamus relief based on a lack of facts regarding his actual eligibility for a hearing stated in the petition. The Commissioner noted that Santiago failed to state the basis for the Risk Review

Panel's rejection of his request, failed to allege that he was eligible for consideration by the panel, and failed to allege that he met the statutory eligibility requirements for seeking review before the panel. Santiago was given the opportunity to amend his petition to state a cause of action showing that he is eligible for consideration by the panel by stating his current offense and prior felony criminal convictions to show that he is eligible to apply to the Risk Review Panel under La. R.S. 15:574.22 and the Department's rules. Santiago was also ordered, if his application had been denied by the Risk Review Panel, to file a copy of the rejection/denial or refusal along with the amending petition for mandamus to confirm that he had applied or attempted to apply for consideration by the panel and that his request was rejected.

In response, Santiago filed an amended writ of mandamus, in which he again sought mandamus relief ordering his application for review by the Risk Review Panel be accepted and that he be granted a hearing before the panel, as well as a declaratory judgment decreeing that he is entitled to submit an application and receive a hearing from the Risk Review Panel and that the panel's rejection/denial of his application was manifestly erroneous and an abuse of discretion. In his amended petition, Santiago complained that his application had been rejected by the Risk Review Panel without a hearing based on an erroneous finding that he was not eligible for review because he was a habitual/fourth offender. Santiago insisted that he had been sentenced as a third felony offender, not a fourth felony offender, and that none of the offenses serving as the basis for his sentence pursuant to the habitual offender statute could be deemed violent.

In support of the allegations of the amended petition, Santiago attached the following exhibits: (1) an April 28, 2006 decision of the Risk Review Panel advising Santiago that the panel reviewed his application and voted to deny the case because Santiago was a habitual/fourth offender, and advising him that if he

found this reason to be incorrect, he could resubmit his application; (2) a letter dated May 24, 2006, from the Risk Review Panel advising Santiago that it was in receipt of his letter disputing the panel's reason for denying him a favorable recommendation, but that Santiago was still classified as a fourth offender in his prison master record and that Santiago should address the matter with his classification officer or the prison records department; (3) a March 14, 2008 decision of the Risk Review Panel returning his application for review on the basis that the application had been previously denied and the panel determined he was ineligible to reapply; and (4) certificates indicating Santiago had participated in various prison programs including a sex offender program, a religious seminar, a peer education program and a fasting program. Although Santiago alluded in his amended petition to having attached as an exhibit a copy of the Habitual Bill of Information, there is no such exhibit in the record before us.

The Commissioner concluded that Santiago's amended petition failed to state a cause of action, finding that there is no authority for a court to review a rejection rendered by a Risk Review Panel. The district court granted the exception of no cause of action on its own motion and dismissed Santiago's petition for review.

#### **EXCEPTION OF NO CAUSE OF ACTION**

The peremptory exception of no cause of action is a procedural device to test the legal sufficiency of the petition. A plaintiff is required by law to allege specific facts within the four corners of the petition and attachments to the petition to show that he has a cause of action upon which relief and judgment may be granted against the defendant. La. C.C.P. art. 353; **Wells v. Flitter**, 2005-2525, p. 4 (La. App. 1<sup>st</sup> Cir. 9/27/06), 950 So.2d 679, 681, writ denied, 2007-0312 (La. 11/2/07), 966 So.2d 598. In determining whether a petition states a cause of action, all well-pleaded allegations of fact in the petition must be accepted as true. The court must

then determine whether the law affords any relief to the claimant if those factual allegations are true. **Home Distribution, Inc. v. Dollar Amusement, Inc.**, 98-1692, p. 5 (La. App. 1<sup>st</sup> Cir. 9/24/99), 754 So.2d 1057, 1060. The question on the exception is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the petition states any valid cause of action for relief. *Id.*

Mandamus is an extraordinary remedy, which never issues in doubtful cases, but only when a public official refuses to perform a duty the law clearly states that he must perform. **Weaver v. LeBlanc**, 2009-0244, p. 5 (La. App. 1<sup>st</sup> Cir. 9/14/09), 22 So.3d 1014, 1017. In his petition for relief, Santiago seeks a writ of mandamus ordering the Risk Review Panel to conduct a hearing on his application for review of his sentence. However, this court has already held that inmates who are eligible for review by the Risk Review Panel pursuant to La. R.S. 15:308 and La. R.S. 15:574.22 do not have a cause of action for a writ of mandamus compelling the Risk Review Panel to hold a hearing on risk review applications. In so doing, this court looked to the history behind La. R.S. 15:308 and La. R.S. 15:574.22 and concluded that the only duty the panel must perform is to review an application of an inmate who is entitled by law to review before the Risk Review Panel. Thus, Santiago does not have a cause of action for mandamus relief compelling the Risk Review Panel to hold a hearing on his risk review application.

Furthermore, we find that Santiago does not have a cause of action for a declaratory judgment decreeing that the Risk Review Panel's rejection of his application was manifestly erroneous or constituted an abuse of discretion. Santiago alleged in his petition that the Risk Review Panel's rejection of his application as a fourth offender is manifestly erroneous because he is actually only a third offender as the habitual offender sentencing transcript indicates that the fourth felony offense was not utilized. The risk review process, however, is not the

proper procedural vehicle for Santiago to challenge his classification as a fourth offender by the prison authorities. The Risk Review Panel clearly has no authority to make classification determinations in deciding whether Santiago is eligible for consideration of a sentence reduction. Santiago's proper remedy is to challenge his classification through the prison's administrative remedy procedure. See Canty v. Day, 99-0649 (La. App. 1<sup>st</sup> Cir. 12/28/99), 756 So.2d 384. Thereafter, Santiago can present his application for sentence review to the Risk Review Panel.

We find that Santiago's petition fails to allege sufficient specific facts to state a cause of action upon which relief may be granted by the district court. Accordingly, the district court properly dismissed Santiago's petition on the basis that it failed to state a cause of action.

#### **CONCLUSION**

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to petitioner, Kevin Santiago.

**AFFIRMED.**