

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1183

LISH ISLAND

VERSUS

**RICHARD L. STALDER, SECRETARY OF THE
LOUISIANA DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, ET AL.**

On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 536,874, Division "M," Section 26
Honorable Kay Bates, Judge Presiding

**Lish Island
Newellton, LA**

**Plaintiff-Appellant
In Proper Person**

**William L. Kline
General Counsel
Baton Rouge, LA**

**Attorney for
Defendants-Appellees
Richard L. Stalder, Secretary of
Louisiana Dept. of Public Safety
and Corrections, et al.**

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Judgment rendered June 8, 2007

Handwritten initials and signatures:
RH
[Signature]
[Signature]

PARRO, J.

Lish Island, 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 of an adverse decision by DPSC. Island initiated his complaint by filing an administrative remedy procedure with DPSC, complaining that he was not actually being awarded diminution of his sentence by thirty days of good time for every thirty days of time served (double good time), pursuant to LSA-R.S. 15:571.3, because when released from prison after serving one-half of his sentence, he would be released under mandatory parole supervision for the remaining term of his sentence, as required by LSA-R.S. 15:571.5(A)(1). Island claimed that this breached the contract he had signed with DPSC, agreeing to accept double good time in lieu of incentive wages. After exhausting his administrative remedies with DPSC, he petitioned the district court for judicial review. Originally filed in the 26th Judicial District Court, the case was transferred to the 19th Judicial District Court, in accordance with LSA-R.S. 15:571.15.

There, his complaint was screened by a commissioner,¹ under the authority of LSA-R.S. 15:1178 and LSA-R.S. 15:1184(A)(2) and (D), who determined Island had failed to state a cause of action and that his complaint could not be amended to state a cause of action, because this same argument had been raised and rejected countless times by the courts of this state. The application of the mandatory parole supervision provisions of the statute had been found to be constitutional, to be consistent with the double good time provisions, and not to be a breach of contract. Because his complaint was frivolous, the commissioner recommended a "strike" be assessed, pursuant to LSA-R.S. 15:1187. Island filed a timely traversal of the recommendation, but the district court's judgment, signed December 5, 2005, accepted all the recommendations of the commissioner, dismissed Island's complaint with prejudice and at his cost, and assessed a strike against him. This appeal followed.

We agree that Island failed to state a cause of action. The validity of the

¹ The office of commissioner of the 19th JDC was created by LSA-R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. The commissioner's written findings and recommendations are submitted to a district judge, who may accept, reject, or modify them. LSA-R.S. 13:713(C)(5).

statutory scheme and the interaction between the double good time provisions and the release under supervision "as if on parole" have been consistently upheld by the courts. See, e.g., Manuel v. Stalder, 04-1920 (La. App. 1st Cir. 12/22/05), 928 So.2d 24, 27 (early release under parole conditions is less onerous punishment than the alternative of serving out a full sentence in prison); Frederick v. Ieyoub, 99-0616 (La. App. 1st Cir. 5/12/00), 762 So.2d 144, 149, writ denied, 00-1811 (La. 4/12/01), 789 So.2d 581 (good time credits do not reduce the length of the original sentence); Bancroft v. Louisiana Dep't of Corrections, 93-1135 (La. App. 1st Cir. 4/8/94), 635 So.2d 738, 741 (requiring supervision "as if on parole" when released because of diminution of sentence due to application of good time credits is not a breach of contract). In addition to this authority, we note that the word "diminution" means a diminishing, and the word "diminish" means "to make smaller, reduce in size, degree, importance, etc." Webster's New World Dictionary 386 (3rd College Edition 1988). The good time provisions speak of diminution of sentence, not elimination, deletion, or cessation of sentence. As the cases have made clear, conditions of parole are far less onerous than incarceration; in other words, those conditions meet the definition of "diminution" of sentence by replacing incarceration with a much lesser degree of restriction.

However, the assessment of a "strike" against Island in this case was legal error, because his suit did not challenge the conditions of confinement, but only the time computation and the conditions of his release. See Manuel, 928 So.2d at 27-28; Frederick, 762 So.2d at 149-50. Therefore, the portion of the judgment assessing a strike against him will be reversed.

For these reasons, the portion of the judgment of the district court, dismissing Island's lawsuit with prejudice and at his costs, is affirmed. This portion of our decision is rendered in accord with Uniform Rules, Courts of Appeal, Rules 2-16.2(2), (4), (5), and (6). The portion of the judgment assessing a strike against Island is hereby reversed. This portion of the decision is rendered in accord with Uniform Rules, Courts of Appeal, Rule 2-16.2(10). Each party is responsible for its own court costs.

AFFIRMED IN PART; REVERSED IN PART.