

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1615

MARION J. AINSWORTH, JR.

VERSUS

C.A. LOWE, CHAIRMAN OF THE LOUISIANA PAROLE BOARD OF
THE DEPT. OF PUBLIC SAFETY AND CORRECTIONS AND
JAMES LEBLANC, SECRETARY OF THE DEPT. OF
PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: March 25, 2011

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 589,656

Honorable Kay Bates, Judge

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Marion J. Ainsworth, Jr.
Jackson, LA

In Proper Person
Plaintiff – Appellant

William Kline
Baton Rouge, LA

Attorney for
Defendant – Appellee
Louisiana Department of
Corrections, et al.

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

WELCH, J.

Marion J. Ainsworth, Jr., a prisoner in the custody of the Louisiana Department of Public Safety and Corrections, appeals the dismissal of his petition for judicial review of a revocation decision by the Louisiana Parole Board. We affirm.

On April 16, 2010, Ainsworth filed this petition for judicial review challenging the Parole Board's decision to revoke his parole. The record reflects that Ainsworth initiated an administrative remedy procedure to challenge the revocation decision, which was denied on the basis that Parole Board matters are not appealable through the administrative remedy procedure.

In his petition for judicial review, Ainsworth alleged that the Parole Board made an error in judgment and that it went beyond its authority in revoking his good time parole. He filed a supplemental brief and arguments in support thereof in which he asserted that his parole was revoked on the basis of a "trumped up so called technical violation" that he was unlawfully present in a game room, a crime he did not commit. He further claimed that the Parole Board erred in finding that he violated a condition of his parole that did not even exist in the conditions upon which his parole supervision had been granted. Ainsworth insisted that the Parole Board was guilty of negligence, misconduct, and malfeasance in office in revoking his parole.

A commissioner appointed by the court screened the petition as required by La. R.S. 15:1178 to determine whether Ainsworth stated a cause of action or a cognizable claim for relief. The commissioner found that Ainsworth could not challenge the decision of the Parole Board through the administrative procedure remedy, but could only seek review of the revocation of his parole through La. R.S. 15:574.11. Because Ainsworth did not seek review through the proper procedure, the commissioner concluded that the petition failed to state a cause of

action for judicial review. The commissioner also found that Ainsworth could not amend the request for judicial review to remove the defect and recommended that the petition be dismissed with prejudice.

In response to the commissioner's recommendations, Ainsworth filed an answer in which he averred that his petition was filed in compliance with La. R.S. 15:574.11. He insisted that he had stated a cause of action when he accused the members of the Parole Board of illegally and unlawfully revoking his parole supervision which constituted malfeasance in office. He further asserted that the Parole Board's decision was manifestly erroneous, violated his right of due process, and that he did not receive a fair and impartial revocation hearing.

The district court noticed the exception of no cause of action on its own motion and granted the exception, adopting the commissioner's reasons as its own. The court ordered that the petition be dismissed with prejudice.

Louisiana Revised Statutes 15:574.11 establishes the process by which decisions of the Board of Parole may be appealed. A parolee has a limited right to appeal a decision of the Parole Board revoking his parole. A district court is vested with jurisdiction over a revocation decision of the Parole Board where the pleadings allege that the parolee's right to a revocation hearing has been denied or that a violation of La. R.S. 15:574.9, which sets forth certain procedures in parole revocation cases, has occurred. La. R.S. 15:574.11(A) and (C); **Leach v. Louisiana Parole Board**, 2007-0848, p. 7, n.4 (La. App. 1st Cir. 6/6/08), 991 So.2d 1120, 1124, n.4, writs denied, 2008-2385 (La. 8/12/09), 17 So.3d 378 and 2008-2001 (La. 12/18/09), 23 So.3d 947. Otherwise, a parolee has no right to appeal a revocation decision. La. R.S. 15:574.11(A).

While Ainsworth clearly attempted to seek judicial review of the revocation decision through the wrong procedural mechanism, the pleadings he filed in the district court should have been analyzed to determine whether Ainsworth stated a

cause of action for judicial review under La. R.S. 15:574.11. After reviewing Ainsworth's petition, supplemental answer, and his response to the commissioner's recommendation, we find that Ainsworth has not stated a cause of action under La. R.S. 15:574.11 because he is only challenging the factual basis for the Parole Board's revocation decision. Ainsworth is essentially contending that the Parole Board erred in revoking his parole based on an alleged "trumped up" charge and in finding that he violated the condition of his parole. He does not claim that his revocation hearing was denied; indeed, he admits that a parole revocation hearing was held. Nor does he allege any defects in the decision process that could fall under La. R.S. 15:574.9. Because Ainsworth's complaints focus on the Parole Board's actions in making its determination as to revocation rather than on a violation of La. R.S. 15:574.9, he has not stated a cause of action to support his limited right of appeal to the trial court under La. R.S. 15:574.11. Therefore, the district court was without appellate jurisdiction to review Ainsworth's attack of the factual findings made by the Parole Board in rendering its revocation decision.

For these reasons, we conclude that the district court properly noticed on its own motion and granted the exception of no cause of action. Considering the entirety of Ainsworth's attack on the decision of the Parole Board levied both at the trial level and in this appeal, we conclude that allowing Ainsworth to amend his petition would be futile. Therefore, the petition for judicial review was properly dismissed with prejudice. All costs of this appeal are assessed against appellant, Marion J. Ainsworth, Jr.

AFFIRMED.