

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2010 CA 1524**

**MICHAEL NEWSON**

**VERSUS**

**JAMES LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY & CORRECTIONS AND BRENDA ACKLIN**

**Judgment Rendered: March 25, 2011**

**Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Docket Number 574,635**

**Honorable Todd Hernandez, Judge Presiding**

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**Michael Newson  
Homer, LA**

**Plaintiff/Appellant, pro se**

**Susan Wall Griffin  
Baton Rouge, LA**

**Counsel for Defendant/Appellee,  
James LeBlanc, Secretary, DPSC**

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**BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.**

## **WHIPPLE, J.**

In this appeal, Michael Newson, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the DPSC”) and confined at David Wade Correctional Center, filed Administrative Remedy Procedure No. DWCC-2008-1409, through which he challenged the determination of the DPSC that he is ineligible to earn diminution of his sentence for good behavior (“good time credits”). The district court rendered judgment in favor of the DPSC and dismissed Newson’s claim with prejudice, and Newson appeals. For the following reasons, we affirm.

### **PROCEDURAL HISTORY**

On May 21, 2001, Newson was convicted of simple burglary of an inhabited dwelling in violation of LSA-R.S. 14:62.2. Thereafter, Newson was adjudicated a second felony offender on the basis of a prior conviction of purse snatching and was sentenced to twenty-four years at hard labor.

On October 31, 2008, Newson filed a request for an administrative remedy, averring that he was improperly being denied eligibility for good time credits given that his **present** conviction was not for a crime enumerated in LSA-R.S. 15:571.3(C)(1) and, thus, did not prevent him from being eligible for good time. The DPSC denied Newson’s request for relief at both steps of the administrative procedure, concluding that Newson was ineligible for good time credits because he had a **prior** conviction for one of the enumerated crimes in LSA-R.S. 15:571.3(C)(1).

Newson then sought judicial review of the denial of his request for an administrative remedy, and the Commissioner likewise determined that under the applicable law, Newson was not eligible to earn good time credits. Thus, the Commissioner recommended that Newson’s petition for judicial review be dismissed with prejudice. From a judgment in accordance with

the Commissioner's recommendation, Newson appeals, contending that the district court erred in allowing the DPSC to deny him good-time eligibility on the basis of a prior conviction where there is a split in the jurisprudence regarding the issue of use of a prior conviction to deny good-time eligibility.

### DISCUSSION

Louisiana Revised Statute 15:571.3 governs eligibility for good time, and at the time of the offense for which Newson is incarcerated, i.e., November 20, 2000, provided, in pertinent part, as follows:

C. Diminution of sentence shall not be allowed an inmate in the custody of the Department of Public Safety and Corrections if:

(1) The inmate has been convicted one or more times under the laws of this state of any one or more of the following crimes:

\* \* \*

(q) Any crime of violence as defined by R.S. 14:2(13).

(r) A violation of the Louisiana Controlled Dangerous Substances Law which is a felony; or

(s) Any felony which is defined as an attempt to commit one of the crimes enumerated in Subparagraphs (a) through (r) of this Paragraph, and

(2) The inmate has been sentenced as an habitual offender under the Habitual Offender Law as set forth in R.S. 15:529.1, and

(3) The inmate's last conviction for the purposes of the Habitual Offender Law, was for a crime: ... (b) committed on or after September 10, 1977. [Footnote omitted].

The requirements of all three subsections of LSA-R.S. 15:571.3(C) must be present in order to deny an inmate the opportunity to earn good time. Spellman v. Stalder, 98-0725 (La. App. 1<sup>st</sup> Cir. 4/1/99), 740 So. 2d 671, 674, writ granted and remanded on other grounds, 99-1801 (La. 10/8/99), 750 So. 2d 172. To fulfill the requirements of LSA-R.S. 15:571.3(C)(1), either a

prior conviction or the instant conviction may be used. Spellman, 740 So. 2d at 674.

Under the clear wording of the statute at the time Newson committed the instant offense, he was not eligible to earn good time credits because: (1) Newson's January 15, 1992 conviction of purse snatching was listed as a crime of violence at the time of the instant offense,<sup>1</sup> thus qualifying as an enumerated offense under LSA-R.S. 15:571.3(C)(1)(q), and his October 23, 1996 conviction for possession of a Schedule II Controlled Dangerous Substance was a violation of the Controlled Dangerous Substances Law which is a felony,<sup>2</sup> thereby qualifying as an enumerated offense under LSA-R.S. 15:571.3(C)(1)(r); (2) Newson was sentenced for his conviction of simple burglary of an inhabited dwelling as a habitual offender pursuant to LSA-R.S. 15:529.1; and (3) Newson's last conviction was for a crime committed after September 10, 1977. See Lewis v. Day, 97-0111 (La. App. 1<sup>st</sup> Cir. 2/20/98), 708 So. 2d 1152, 1155. Accordingly, Newson was not eligible to earn good time while serving his current sentence for simple burglary of an inhabited dwelling.

Moreover, we find no merit to Newson's contention that there is a conflict in the jurisprudence on this issue. Newson contends that this court's holdings in Nicholas v. Phelps, 521 So. 2d 636 (La. App. 1<sup>st</sup> Cir. 1988), and Lewis v. Day are in conflict. Specifically, he notes that in Nicholas, the inmates were denied good-time eligibility on the basis that their **present**

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<sup>1</sup>See LSA-R.S. 14:2(13)(z), as it read on November 20, 2000.

<sup>2</sup>See LSA-R.S. 14:2(4) & 40:967(C), as they read on August 16, 1996, the date of Newson's offense of possession of cocaine.

convictions were for crimes enumerated in LSA-R.S. 15:571.3(C)(1), Nicholas, 521 So. 2d at 637, whereas in Lewis, this court noted that the Attorney General had issued an opinion that good-time eligibility could be denied where either the **present** or a **prior** conviction was for a crime enumerated in LSA-R.S. 15:571.3(C)(1).<sup>3</sup> Lewis, 708 So. 2d at 1153. Thereafter, this court specifically held that a prior conviction for a crime enumerated in LSA-R.S. 15:571.3(C)(1) could form the basis for the denial of good-time eligibility. Spellman, 740 So. 2d at 674.

However, no conflict exists in the holdings of these cases. The court in Nicholas simply was not faced with the issue of whether a **prior** conviction for a crime enumerated in LSA-R.S. 15:571.3(C)(1) could be used as a basis to deny good-time eligibility. Nicholas, 521 So. 2d at 637. Thus, the court's holding in Nicholas that the inmates therein were not eligible for good time on the basis that their **present** convictions were for crimes specifically enumerated in LSA-R.S. 15:571.3(C)(1) is not in conflict with subsequent holdings that a **prior** conviction of an enumerated offense could form the basis for denial of good time and is not dispositive of the issue presented in the instant case.

### CONCLUSION

For the above and foregoing reasons, the June 2, 2010 judgment of the district court, dismissing Newson's petition for judicial review with prejudice, is affirmed. Costs of this appeal are assessed against Michael Newson.

**AFFIRMED.**

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<sup>3</sup>We note that while there was some discussion about either a prior or present conviction for a crime enumerated in LSA-R.S. 15:571.3(C)(1) providing the basis for denial of good time, the inmate in Lewis, similar to the inmate in Nicholas, was denied good-time eligibility on the basis that his **present** offense was an offense enumerated in LSA-R.S. 15:571.3(C)(1). Lewis, 708 So. 2d at 1155.