

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0210

MICHAEL SHOEMAKER

VERSUS

**JAMES LEBLANC, SECRETARY,
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS;
BURL CAIN, WARDEN, LOUISIANA STATE PENITENTIARY;
GARY AYMOND; AND PRESTON BORDELON**

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 564,534, Section 22
Honorable Timothy E. Kelley, Judge Presiding**

*BJC by TMH
RHP by TMH
TMH*

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New Orleans, LA**

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Plaintiff-Appellant
Michael Shoemaker**

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**Attorney for
Defendants-Appellees
James LeBlanc, Secretary, Department
of Public Safety and Corrections, et al.**

BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

Judgment rendered SEP 30 2011

PARRO, J.

Michael Shoemaker, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment that dismissed his petition for judicial review of a disciplinary decision. For the following reasons, we affirm the judgment.

In a disciplinary report concerning Shoemaker's behavior with a female visitor, Captain Gary Aymond stated that he observed Shoemaker and his visitor rubbing each other in an explicitly sexual manner, in violation of prison regulations. Shoemaker was removed from the visiting area, and his visitor was escorted out of the prison. He was charged with a violation of Rule 21, "Aggravated Sex Offense," was found guilty of this offense after a hearing before the disciplinary board, and was sentenced to a custody change to maximum (working cellblock). Shoemaker appealed this decision to Warden Burl Cain, who reviewed the tape of the hearing and determined that all the requirements of due process had been met, the evidence of the employee witness supported the charge, and the finding of guilt and the sentence were appropriate. On review by DPSC Secretary James M. LeBlanc, the decision was affirmed.

Shoemaker then filed a petition for judicial review with the Nineteenth Judicial District Court (19th JDC). DPSC filed the entire administrative record, along with an exception raising the objection of lack of subject matter jurisdiction for failure to state a violation of a substantial right. Pursuant to the screening requirements of LSA-R.S. 15:1178(B) and 15:1188(A), the petition for judicial review was assigned to a commissioner at the 19th JDC to determine if the petition stated a cognizable claim or failed to state a cause of action. After completing the screening review, the commissioner issued a report recommending dismissal, with prejudice, because the petition for judicial review did not raise a substantial right violation, as required by LSA-R.S. 15:1177(A)(9) in order for the district court to have jurisdiction over the matter, and therefore failed to state a cause of action or cognizable claim for relief. Shoemaker filed a traversal of the recommendation. After a careful *de novo* review of the record,

the district court signed a screening judgment on October 14, 2010, adopting the written recommendation of the commissioner and dismissing the petition for judicial review, with prejudice and without service on the defendants, for failure to state a cause of action.

This court has reviewed the record, including a number of miscellaneous writings filed by Shoemaker that have no conceivable relevance to this proceeding, and we find no error in the judgment of the district court. Despite Shoemaker's handicap that requires him to use a wheelchair, the change in the condition of custody imposed on him in this case was not atypical nor a significant hardship and does not rise to a violation of a constitutional or substantial right. See Lay v. Porey, 97-2903 (La. App. 1st Cir. 12/28/98), 727 So.2d 592, writ denied, 99-2720 (La. 12/28/98), 758 So.2d 812; Parker v. LeBlanc, 02-0399 (La. App. 1st Cir. 2/14/03), 845 So.2d 445, 446. We affirm the judgment of the district court and issue this memorandum opinion in accordance with Rule 2-16.1.B of the Uniform Rules of Louisiana Courts of Appeal. All costs of this appeal are assessed to Shoemaker.

AFFIRMED.