

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 1323

MICHAEL W. ROSE

VERSUS

STATE OF LOUISIANA
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS


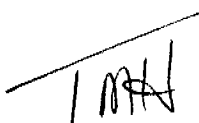

Judgment Rendered: February 10, 2012

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 588,047

Honorable Wilson Fields, Judge Presiding

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 Michael W. Rose
Richwood, LA

Plaintiff-Appellant,
In Proper Person

William L. Kline
Baton Rouge, LA

Attorney for Defendant-Appellee,
James M. LeBlanc, Secretary,
Louisiana Department of Public
Safety and Corrections

* * * * *

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

HIGGINBOTHAM, J.

Michael W. Rose, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment that affirmed DPSC's final decision in an administrative remedy procedure and dismissed his petition for judicial review of that decision. We affirm the district court judgment maintaining DPSC's decision.

BACKGROUND

Rose is serving a 26-year sentence for a 1989 conviction for manslaughter and obstruction of justice, with an original full-term release date of June 2013. Rose was first released from physical custody in 1997 on ordinary parole, which was revoked in 2000 for some reason not reflected in the record. Rose was released a second time from physical custody, pursuant to La. R.S. 15:571.5 for good-time parole supervision on July 15, 2004, with the second parole projected to end on July 8, 2016. However, in September 2009, Rose's second parole was revoked for violations of the conditions of his good-time parole supervision. As a consequence, Rose was re-incarcerated to serve the remainder of his original full term in DPSC's physical custody, which amounted to twelve more years calculated as of the time of his second release in 2004.¹ Rose's new full-time release date was calculated by DPSC to be June 20, 2021, and his new anticipated good-time release date was adjusted by DPSC to June 23, 2015.

After learning that his new release date extended past his original full-term release date, Rose filed an Administrative Remedy Procedure (ARP), No. HDQ-2010-0028, challenging DPSC's computation of his release date. DPSC denied relief, and Rose filed a petition for judicial review in the Nineteenth Judicial District Court, seeking review of the final agency decision in his ARP challenging

¹ At the time of Rose's good-time supervised parole release and subsequent parole revocation, the law did not allow credit for time served on parole. Louisiana Revised Statute 15:571.5(C) was amended by Acts 2010, No. 792, § 1, effective August 15, 2010, to allow credit for time served for good behavior while on parole, even where the parole is revoked.

DPSC's computation of his full-term release date following his good-time parole revocation. Alternatively, Rose requested the return of fees he paid for parole supervision.² Rose contended that his constitutional rights were violated when DPSC failed to inform him that a violation of parole conditions would result in forfeited fees and time served while on supervised parole, resulting in a new release date that extended past the original full-term release date.

After a *de novo* review of the entire record, the district court adopted the reasons outlined in the "Commissioner's Screening Report," which found that the DPSC decision was soundly based on applicable law and did not violate any of Rose's constitutional rights. The district court maintained DPSC's decision and dismissed Rose's petition. Rose appealed to this court, arguing that DPSC's actions violated his constitutional rights, because he was not informed that if his parole was revoked for violations of parole conditions, he would forfeit money he had paid toward parole supervision fees, as well as forfeit time served while on supervised parole. Rose further argues that the district court failed to properly address the issue of whether he was advised of the conditions of his parole and that the district court erred in finding that the law was clear concerning time computations for parole revocation situations.

DISCUSSION

Our careful review of the record reveals that Rose's second release on parole by diminution of sentence was granted in accordance with the statutory scheme set out in the applicable version of La. R.S. 15:571.5, providing at all pertinent times in these proceedings:

- A. (1) When a prisoner committed to [DPSC] is released because of diminution of sentence pursuant to this Part, he shall be released as if released on parole.

* * *

² Rose's petition also requested monetary damages, but that claim was dismissed in a separate partial judgment rendered on July 9, 2010.

B. (1) Before any prisoner is released on parole upon diminution of sentence, he shall be issued a certificate of parole that enumerates the conditions of parole. These conditions shall be explained to the prisoner and the **prisoner shall agree in writing** to such conditions prior to his release on parole.

* * *

C. If such person's parole is revoked by the parole board for violation of the terms of parole, the person shall be recommitted to [DPSC] **for the remainder of the original full term.**
(Emphasis added.)

Prior to his release, Rose had a choice to serve out his full term of imprisonment without parole or to be released on supervised parole conditioned upon compliance with the terms of his release for diminution of sentence under La. R.S. 15:571.5. See Bancroft v. Louisiana Dept. of Corrections, 93-1135 (La. App. 1st Cir. 4/8/94), 635 So.2d 738, 739-40 (holding that an inmate did not sign parole conditions release form under duress, even though such signing was a prerequisite to his release from custody, but rather, he chose conditional early release over the option of serving the remainder of his sentence).

Rose obviously chose early release under the terms stipulated in the statute, which is evidenced by his signature on the form containing the general conditions for his diminution of sentence certificate. Rose agreed to the conditions and signed the certificate, as required on July 13, 2004, two days prior to his release on supervised parole. The certificate clearly provides that "Parole Supervision shall not become operative until the following conditions are agreed to by the inmate." The certificate further declares that Rose understood all of the conditions which had been read to him, and he promised and agreed to conform to the conditions. Conditions were listed on the front and back side of the certificate and the statute is clearly referenced on the front side of the certificate.

We find no evidence in the record that Rose had not been informed or that he did not agree to the conditions of his release on supervised parole. Rose's signature on the certificate outlining the conditions of his parole is evidence that he

acknowledged his understanding of all the conditions, that the conditions had been read to him, and that he agreed to conform to the conditions. Given the facts that parole supervision was granted and Rose was released by diminution of sentence on July 15, 2004, two days after his signature, the record clearly reflects that Rose understood and agreed to the supervised parole conditions set forth in the certificate and to the application of supervised parole in accordance with La. R.S. 15:571.5. The statute clearly outlines the consequences of parole revocation.

Further, we find that DPSC, the commissioner, and the district court fully considered Rose's arguments, including the issue of whether he was properly advised of the conditions of his parole. DPSC's response to Rose's grievance in the ARP explicitly refers to Rose's signature on the release certificate and notes that payment of supervision fees is a condition of release with no stipulation that refunds will be made if parole is revoked. The commissioner's recommendation to the district court correctly cited jurisprudence holding that a parolee has no right to credit for time served while on parole, because parole is an act of grace by the State that carries with it consequences for revocation, including no credit for the time spent at liberty. **Bancroft**, 635 So.2d at 740.

CONCLUSION

After a thorough review of the record, in consideration of Rose's arguments, and applying the relevant law and jurisprudence, we find no error of law or abuse of discretion by the district court. We affirm the district court's judgment and find that the district court's reasons for judgment, as set forth in the commissioner's recommendation, adequately explain the decision. All costs associated with this appeal are assessed to plaintiff/appellant, Michael W. Rose.

AFFIRMED.