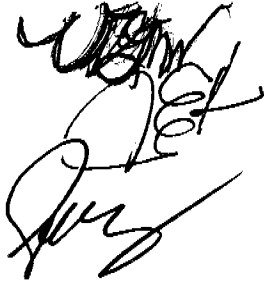


NOT DESIGNATED FOR PUBLICATION



STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 2017

MOSE PERKINS

VERSUS

LOUISIANA PAROLE BOARD

Judgment Rendered: May 2, 2012

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 588,135

The Honorable Kay Bates, Judge Presiding

Mose Perkins
Angie, LA

In Proper Person,
Mose Perkins

Patricia H. Witson
Baton Rouge, LA

Counsel for Defendant/Appellee,
Louisiana Parole Board

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

WHIPPLE, J.

Mose Perkins, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the DPSC”), filed suit in district court seeking to challenge the decision of the Louisiana Parole Board (“the Parole Board”) to revoke his parole. The district court rendered judgment dismissing Perkins’ suit as untimely pursuant to LSA-R.S. 15:574.11(D). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Perkins’ parole was revoked pursuant to a decision of the Parole Board on May 28, 2009, for absconding. Perkins filed a petition for judicial review captioned, “Appeal of Parole Revocation,” seeking review of the Parole Board’s determination pursuant to LSA-R.S. 15:574.11. Therein, Perkins challenged the Parole Board’s determination that he absconded supervision and further contended that his “due process, constitutional rights, and equal protection rights” were violated. Although Perkins did not date the certification at the end of his petition, it was stamped as having been received by the clerk’s office on February 26, 2010. The petition was accompanied by a motion to proceed *in forma pauperis*, also stamped as having been received by the clerk’s office on February 26, 2010, but dated February 22, 2010, by Perkins.

The matter was heard by the Commissioner on March 10, 2011. At the hearing, the Parole Board pointed out that Perkins’ appeal of his parole revocation was governed by the ninety-day preemptive period set forth in LSA-R.S. 15:574.11(D). As such, the Parole Board argued that Perkins would have had ninety days from the revocation decision, *i.e.*, May 28, 2009, to challenge the Parole Board’s decision and any petition or appeal filed by Perkins in February of 2010 was clearly untimely on its face.

The Commissioner issued a recommendation on July 27, 2011 that Perkins' petition for review of the Parole Board's revocation decision be dismissed, with prejudice, as untimely pursuant to LSA-R.S. 15:574.11(D). Perkins filed a motion to traverse the Commissioner's screening report, after which the district court rendered judgment in accordance with the Commissioner's recommendation. Perkins then filed the instant appeal of the district court's August 11, 2011 judgment.

DISCUSSION

Louisiana Revised Statute 15:574.11 sets forth the procedure by which a parolee may seek review of the revocation of his parole and provides, in pertinent part, as follows:

D. Petitions for review that allege a denial of a revocation hearing under the provisions of R.S. 15:574.9 shall be subject to a peremptive period of ninety days after the date of revocation by the Board of Parole. When revocation is based upon the conviction of a new felony while on parole, the ninety-day peremptive period shall commence on the date of final judgment of the new felony. Petitions for review filed after this peremptive period shall be dismissed with prejudice. Service of process of petitions for review shall be made upon the chairman of the Board of Parole or his designee. The only proper party defendant in an action under this Section shall be the Board of Parole.

Louisiana Revised Statute 15:574.11 is a statutory grant of appellate jurisdiction to the Nineteenth Judicial District Court to review decisions of the Parole Board where a denial of a revocation hearing under LSA-R.S. 15:574.9 is alleged or the procedural due process protections specifically afforded for such a hearing were violated. Thus, an appeal is allowed only where the parolee has alleged in his petition for judicial review that his right to a revocation hearing has been denied or that the procedural due process protections specifically afforded by LSA-R.S. 15:574.9 in connection with such a hearing were violated. Leach v. Louisiana Parole Board, 2007-0848 (La. App. 1st Cir. 6/6/08), 991 So. 2d 1120, 1124, writs denied, 2008-2385 (La.

8/12/09), 17 So. 3d 378, and 2008-2001 (La. 12/18/09), 23 So. 3d 947; see also Brown v. LeBlanc, 2010-0491 (La. App. 1st Cir. 10/29/10), 48 So. 3d 419, 421. There is no other basis for an appeal. LSA-R.S. 15:574.11(A).

Importantly, in these limited, specified circumstances where an appeal is allowed, it must be taken within ninety days. LSA-R.S. 15:574.11(D); Sams v. Louisiana Parole Board, 2010-1692, pp. 2-3 (La. App. 1st Cir. 3/25/11)(unpublished); Collins v. Louisiana Board of Parole, 2009-1800, p. 4 (La. App. 1st Cir. 3/26/10) (unpublished); see also Penon v. Henderson, 2009-2276, pp. 2-3 (La. App. 1st Cir. 6/11/10)(unpublished). The plain language of LSA-R.S. 15:574.11(D) provides that the time period provided therein is preemptive. Preemption is a period of time fixed by law for the existence of a right. Unless timely exercised, the right is extinguished upon the expiration of the preemptive period. LSA-C.C. art. 3458. Additionally, preemption may not be renounced, interrupted, or suspended. LSA-C.C. art. 3461.

In the instant case, Perkins' parole was revoked on May 28, 2009. His petition seeking judicial review of his parole revocation was filed on February 22, 2010, at the earliest. Thus, because Perkins did not file his petition for judicial review until approximately nine months after the Parole Board rendered its decision to revoke his parole, i.e., well after the ninety days within which he was allowed by law to seek judicial review, Perkins' right to seek review, if any, was extinguished by his failure to file a petition within the period set forth in LSA-R.S. 15:574.11(D). See Sams, 2010-1692 at p. 3.

Accordingly, we find no merit to this assignment of error.

CONCLUSION

For the above and foregoing reasons, the August 11, 2011 judgment of the district court dismissing Perkins' petition for judicial review with prejudice is

affirmed. Costs of this appeal are assessed against plaintiff/appellant, Mose Perkins.

AFFIRMED.