

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2011 CA 1790**

**NELSON WAITS**

**VERSUS**

**JAMES KEITH DEVILLE, WARDEN, J. LEVY DABADIE CORRECTIONAL  
CENTER, & STACY KADERKA, OFFICER**

*JK*  
*Q7P*  
*JKW*

**Judgment Rendered: MAY - 2 2012**

**\* \* \* \* \***

On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 592,828

Honorable Janice Clark, Judge Presiding

**\* \* \* \* \***

Nelson Waits  
Rayburn Correctional Center  
Angie, Louisiana

Plaintiff/Appellant  
In proper person

William Kline  
Baton Rouge, Louisiana

Counsel for Defendant/Appellee  
Louisiana Department of  
Corrections

**\* \* \* \* \***

**BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.**

**McCLENDON, J.**

Nelson Waits, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment dismissing his petition for judicial review of a disciplinary decision on the grounds that he failed to raise a "substantial right" violation. We affirm the judgment.

According to the record, Waits filed for judicial review of DPSC's decision denying his appeal of a disciplinary board ruling finding him guilty of violating Disciplinary Rule Number 21E (Aggravated Sex Offense). Waits was sentenced to a custody change and the temporary loss of the right to earn incentive wages. A screening report submitted by the Commissioner recommended that Waits' appeal be dismissed at his cost for the failure to raise a "substantial right" violation, as required by LSA-R.S. 15:1177.<sup>1</sup> The district court, adopting the recommendation of the Commissioner, rendered a judgment on December 30, 2010, dismissing Waits' appeal.

The Commissioner's screening recommendation stated, in pertinent part:

The Petitioner seeks review of the merits of his claims raised in proceedings and on appeal. However, I note that based on the penalties imposed, there is no substantial right involved in this

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<sup>1</sup> Louisiana Revised Statutes 15:1177A(9) provides, in pertinent part:

A. Any offender who is aggrieved by an adverse decision ... by the Department of Public Safety and Corrections ... rendered pursuant to any administrative remedy procedures under this Part may, within thirty days after receipt of the decision, seek judicial review of the decision only in the Nineteenth Judicial District Court or, if the offender is in the physical custody of the sheriff, in the district court having jurisdiction in the parish in which the sheriff is located, in the manner hereinafter provided:

\* \* \*

(9) The court may reverse or modify the decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional or statutory provisions.
- (b) In excess of the statutory authority of the agency.
- (c) Made upon unlawful procedure.
- (d) Affected by other error of law.
- (e) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (f) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record.

disciplinary decision. Thus, by virtue of R.S. 15:1177A, this Court has no authority to intervene in the ordinary discipline of a prisoner.

The penalty of a custody change and prospective loss of incentive wages are authorized penalties for a Rule 21 (major) disciplinary violation, under the Department's Rules and Procedures, found in Louisiana Administrative Code, Title 22:1:341, et seq, for reference. Neither penalty presents a substantial right violation. The Petitioner has no statutory or constitutional right to a particular housing or custody status, and neither does he have any property interest in future incentive wages.

\* \* \*

In this case, the only penalty imposed was a custody level change (to medium security) and temporary and prospective loss of privilege to earn incentive wages. The Petitioner does not assert facts to support a finding that any constitutional right or even statutory right is involved in the penalty imposed. I[n] fact, the Petitioner acknowledges that he was afforded hearings and an appeal of the ruling to the Warden, who denied relief. Considering the nature of the penalty, and the fact that it does not affect the length of the Petitioner's sentence or present any other drastic departure from expected prison life, the Petitioner fails to set forth a substantial right violation which would authorize this Court to intervene and reverse the Agency's decision. Consequently, this Court has not [sic] authority to review the claims raised in reference to the nature of the disciplinary hearing, and this suit must be dismissed because it is without a basis in law or fact. (Footnotes omitted.)

After a thorough review of the record, we find no error in the analysis or conclusions of the district court. We, therefore, affirm the screening judgment of the district court and issue this memorandum opinion in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1B. All costs of this appeal are assessed against Nelson Waits.

**AFFIRMED.**