

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 0962

NOLAN SCHOUEST, INDIVIDUALLY AND ON BEHALF OF
OTHER SIMILARLY SITUATED INMATES

VERSUS

LOUISIANA STATE PAROLE BOARD AND THE LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

DATE OF JUDGMENT: DEC 23 2008

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
(NO. C552,773, SEC. 27, DIV. "N"), PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE DONALD R. JOHNSON, JUDGE

Nolan Schouest,
Angola, Louisiana

Petitioner-Appellant
Pro Se

Wendell Woods
Assistant Attorney General
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
Louisiana Parole Board and the
Louisiana Department of Public Safety
and Corrections

BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

Disposition: AFFIRMED.

Guidry, J. concurs in the result.

KUHN, J.

Petitioner-appellant, Nolan Schouest, an incarcerated prisoner, appeals the district court's judgment dismissing without prejudice his claims against the Louisiana Department of Public Safety and Corrections (the Department) for failure to exhaust administrative remedies. And the district court expressly dismissed his request for declaratory, mandamus, habeas, and injunctive relief against the Louisiana Parole Board (the Board) with prejudice, apparently granting on its own motion a peremptory exception raising the objection of failure to state a cause of action for which relief may be granted.

Complaints and grievances pertaining to time computations even when urged as a writ of habeas corpus fall within the ambit of Corrections Administrative Remedy Act, which is the exclusive remedy. See La. R.S. 15:1171B. Accordingly, a prisoner alleging an error in time computations must pursue his claim through the administrative remedy procedure. See *Williams v. Creed*, 2007-0614, p. 4 (La. App. 1st Cir. 12/21/07), 978 So.2d 419, 422. Thus, having failed to exhaust his remedies against the Department, the district court correctly dismissed appellant's petition against this defendant without prejudice.¹

Insofar as appellant's complaint against the Board, in *State v. Thomas*, 2007-0634, p. 1 (La. 1/11/08), 972 So.2d 323, 324 (*per curiam*), the Louisiana Supreme Court stated:

When the legislature added the offense of second degree murder to the Criminal Code and provided a sentence of life

¹ On appeal, appellant challenges for the first time the constitutionality of the Corrections Administrative Remedy Act (CARP), averring that it divests the district court of original jurisdiction in violation of La. Const. Art. V, § 16(A). The constitutionality of a statute must first be questioned in the trial court and must be specifically pled. *Vallo v. Gayle Oil Co., Inc.*, 94-1238 (La.11/30/94), 646 So.2d 859, 863. Hence, constitutionality of the CARP is not an issue before us in this review.

imprisonment at hard labor without eligibility for parole, probation, or suspension of sentence for 20 years, 1973 La. Acts 111, it did not, by negative implication, give an inmate the right to apply for suspension of sentence and probation after serving 20 years of his life term.

La. R.S. 14:30.1(2), as enacted by Acts 1973, No. 111, does not conflict with La. R.S. 15:574.4B, as enacted by Acts 1968, No. 191. Parole eligibility is determined by the sentence meted out upon conviction, which is different from eligibility for parole consideration, as regulated by R.S. 15:574.4. See *Bosworth v. Whitley*, 627 So.2d 629, 631 (La. 1993).

Appellant was convicted in 1976 and has continuously been in custody since. Therefore, he is now eligible for parole, but must obtain a commutation in order to be considered for parole. See *State v. Henderson*, 95-0267 (La. App. 4th Cir. 4/3/96), 672 So.2d 1085, 1091, writ denied, 96-1160 (La. 10/11/96), 680 So.2d 648. Having admitted that he has failed to obtain a commutation of his life sentence to a fixed number of years, the district court correctly raised the peremptory exception based on the objection of the failure of the petition to state a cause of action to which relief may be granted and dismissed appellant's claims against the Board.² See La. C.C.P. art. 927.

Accordingly, we affirm the district court's judgment by this summary disposition in accordance with La. U.R.C.A. Rule 2-16.2.A.(2),(4),(5), and (6). Appeal costs are assessed against petitioner-appellant, Nolan Schouest.

AFFIRMED.

² Because appellant has not been deprived of parole eligibility but has simply failed to adhere to the requirements by which to seek parole consideration, his claim of a denial of a liberty interest in violation of his constitutional rights is without merit.