

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 2100

RICKY CARTHAN

VERSUS

JIMMY LeBLANC, SECRETARY
DEPARTMENT OF CORRECTIONS & RISK REVIEW PANEL
STATE OF LOUISIANA

Judgment Rendered: May 7, 2010

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 565,108

Honorable Timothy E. Kelley, Judge

Ricky Carthan
Angola, LA

In Proper Person
Plaintiff – Appellant

William Kline
Baton Rouge, LA

Attorney for
Defendants – Appellees
Jimmy LeBlanc, Secretary
Dept. of Corrections and Risk
Review Panel, State of La.

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WELCH, J.

Ricky Carthan, a prisoner in the custody of the Department of Public Safety and Corrections, appeals a judgment in which the district court, on its own motion, granted an exception of no cause of action in favor of defendants, Louisiana State Public Safety and Corrections Department and Risk Review Panel of Louisiana. We affirm.

BACKGROUND

On March 14, 2008, Carthan, an inmate housed at the Louisiana State Penitentiary at Angola, filed this petition for a writ of mandamus, seeking to have the court order the Louisiana Risk Review Panel to furnish or provide him with a hearing pursuant to La. R.S. 15:308. Louisiana Revised Statutes 15:308 provides for the retroactive application of ameliorative penalty provisions enacted by the Legislature in 2001 and 2002 to persons sentenced to certain enumerated crimes prior to June 15, 2001. It further provides that such persons “shall be entitled to apply to the Louisiana Risk Review Panel pursuant to R.S. 15:574.22,” provided that the “application ameliorates the person’s circumstances.” La. R.S. 15:308(C) and (B). However, La. R.S. 15:574.22(G) provides that certain offenders are not eligible for review by the Risk Review Panel, including those convicted of a crime defined or enumerated as a crime of violence in La. R.S. 14:2(B), as well as other persons with certain criminal histories.

In his petition, Carthan alleged that he was entitled to a hearing before the Risk Review Panel because he was sentenced under La. R.S. 15:529.1(A)(1)(b)(ii) and (c)(ii), provisions specifically listed in La. R.S. 15:308, but claimed that every time he applied for review of his sentence, he was denied a hearing before the panel. He charged that the Department violated his right to equal protection by allowing inmates sentenced under other provisions enumerated in La. R.S. 15:308 to seek review, but denied all prisoners sentenced under La. R.S.

15:529(A)(1)(b)(ii) and (c)(ii) the right to review and relief before the Risk Review Panel. To his petition, Carthan attached his request for an administrative remedy procedure in which he complained of being denied a hearing before the Risk Review Panel and a letter from the Angola warden to a congressman dated October 29, 2007, which noted that Carthan submitted Risk Review Panel applications on May 22, 2002, September 22, 2006, and April 27, 2007, but the panel had not yet acted on the applications.

In screening the petition, the Commissioner observed that the petition failed to state a cause of action for mandamus relief based on a lack of facts regarding Carthan's actual eligibility for a hearing before the Risk Review Panel. The Commissioner noted that Carthan failed to state the basis for the panel's rejection, failed to allege that he met the requirements of La. R.S. 15:574.22 regarding his criminal history, and failed to allege any facts that show he is entitled to relief. Carthan was ordered to amend his petition to set forth a cause of action, if he could, by stating facts showing he is eligible for consideration by the panel under La. R.S. 15:574.22 and the Department's rules, including his current offense and prior felony convictions. Carthan was also ordered, if his application to the Risk Review Panel had been denied, to file a copy of the rejection/denial or refusal along with the amending petition for mandamus relief to confirm that he has applied or attempted to apply for consideration by the panel and that his request was rejected.

In response, Carthan filed an amended petition in which he stated that he applied to the Risk Review Panel over five times before with no response at all. However, he also alleged that the panel incorrectly interpreted the law when it refused his application for evaluation and review. Carthan averred that prior to 2001, he had been convicted of attempted simple robbery and was sentenced as a fourth felony offender under La. R.S. 15:529.1(A)(1)(c)(ii), which required a

mandatory life sentence because of a crime of violence in his criminal history. He attached to his petition the habitual offender bill of information setting forth his prior convictions of attempted aggravated rape, theft of property valued at more than \$100.00 but less than \$500.00, issuing worthless checks, and illegal possession of stolen things. He also attached to his petition Department Regulation No. B-01-003, which sets forth numerous instances in which inmates are ineligible to apply for Risk Review Panel consideration, including inmates convicted of a crime of violence as defined or enumerated in La. R.S. 14:2. In a second amended petition, Carthan attached a document from the Louisiana State Penitentiary Classification Department regarding the status of Carthan's Risk Review Panel application with the notation "not eligible." In his amended petitions, Carthan alleged that he is one whose condition would be ameliorated by the reduction in the severity of the habitual offender law and that Department Regulation B-01-003 nullified La. R.S. 15:308, was discriminatory, and denied those sentenced prior to the 2001 amendment of R.S. 15:529.1(A)(1)(b)(ii) and (c)(ii) equal protection of the law.

The Commissioner again recommended that the petition be dismissed for failure to state a cause of action, finding that there is no authority for a court to review a recommendation rendered by the Risk Review Panel, and that mandamus relief is not available to compel a response from the Risk Review Panel. The district court, on its own motion, raised the exception of no cause of action and dismissed Carthan's petition for failure to state a cause of action.

EXCEPTION OF NO CAUSE OF ACTION

The peremptory exception of no cause of action is a procedural device to test the legal sufficiency of the petition. In determining whether a petition states a cause of action, all well-pleaded allegations of fact in the petition must be accepted as true, and no reference can be made to extraneous supporting or converting

evidence. The court must then determine whether the law affords any relief to the claimant if those factual allegations are true. **Home Distribution, Inc. v. Dollar Amusement, Inc.**, 98-1692, p. 5 (La. App. 1st Cir. 9/24/99), 754 So.2d 1057, 1060. The question on the exception is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the petition states any valid cause of action for relief. *Id.*

In this lawsuit, Carthan seeks to have a court order the Risk Review Panel to give him a hearing on his application or to give consideration to his application. Carthan insists that he is entitled to be heard before the Risk Review Panel to present evidence to have his sentence ameliorated. He claims that he is not asking for a court to order that he receive a favorable recommendation from the panel, but to clarify the eligibility of persons sentenced under La. R.S. 15:529(A)(1)(b)(ii) and (c)(ii) prior to 2001. In brief, Carthan states that the basis for rejection of his application was “violent criminal history.” He contends that there is a conflict in the law between La. R.S. 15:574.22(G), which denies inmates with certain criminal histories the right to apply to the Risk Review Panel for review of their sentences, and La. R.S. 15:308, which gives inmates who received harsher sentences the opportunity to have their sentences reduced in accordance with the ameliorative legislation. He also contends he has been denied equal protection of the law because no inmate who has been sentenced under La. R.S. 15:529.1(A)(1)(b)(ii) and (c)(ii) who would benefit from the ameliorative penalty provisions has received a hearing from the Risk Review Panel on an application for sentence review.

In **Weaver v. LeBlanc**, 2009-0244 (La. App. 1st Cir. 9/14/09), 22 So.3d 1014, this court rejected a similar argument. Therein, an inmate complained that his application had been denied by the panel based on his extensive criminal history, and argued that because all persons sentenced under the habitual offender

law had an extensive criminal history, to deny his application for that reason was clearly contrary to the legislative intent in passing La. R.S. 15:308. This court, assuming that the inmate did not have any prohibiting crimes that would prohibit the Risk Review Panel's ability to review his application, found that an inmate does not have a cause of action for mandamus relief to compel the Risk Review Panel to hold a hearing on an application for review, to order that the Risk Review Panel review an inmates' case, or to order the panel to grant a favorable recommendation to the Parole and Pardon Board. **Weaver**, 2009-0244 at pp. 3-5, 22 So.3d at 1016-1017. In so doing, this court looked to the history behind the enactment of the ameliorative penalty provisions and the legislation creating the Risk Review Panel, observing that the panel's duty is limited in part to evaluating inmates who have *not been convicted of a violent crime*. **Weaver**, 2009-0244 at p. 3, 22 So.3d at 1016 (emphasis in original). This court concluded that the only duty the law clearly states the panel must perform is to review a qualified applicant's application and that there is no legal authority for a court to compel any other action by the Risk Review Panel. **Weaver**, 2009-0244 at p. 5, 22 So.3d at 1017.

The allegations of Carthan's petition disclose that he is not entitled to seek review of his sentence before the Risk Review Panel because he has been convicted of a crime of violence as defined by La. R.S. 14:2(B), namely, attempted aggravated rape. Louisiana Revised Statutes 15:574.22(G) declares that persons convicted of a crime defined or enumerated as a crime of violence in La. R.S. 14:2(B) are not eligible for review by the Risk Review Panel. Because La. R.S. 15:574.22 prohibits the Risk Review Panel's ability to review inmates with certain criminal histories, and Carthan has been convicted of one of the prohibiting crimes, he clearly is not entitled to the mandamus relief he seeks. Moreover, even if Carthan was not statutorily prohibited from demanding that the Risk Review Panel review his application, **Weaver** makes it clear that a district court is without power

to order the Risk Review Panel to hold a hearing on Carthan's risk review application or to order the Risk Review Panel to review his case. Therefore, the district court properly found that Carthan does not have a cause of action to obtain the relief he seeks in this lawsuit.

CONCLUSION

For these foregoing reasons, we hold that the district court properly dismissed Carthan's petition for mandamus relief on the basis it failed to state a cause of action. All costs of this appeal are assessed to petitioner, Ricky Carthan.

AFFIRMED.