

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 2013

ROBERT BISHOP

VERSUS

ROBERT CLEMENTS & PROBATION-PAROLE

Judgment Rendered: JUN - 8 2012

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit number 588,628

Honorable Timothy E. Kelley, Presiding

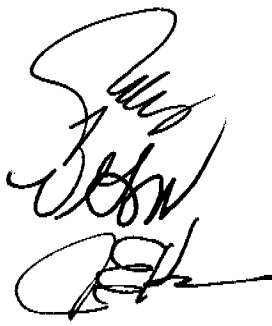
Robert Bishop
Rayville, LA

Plaintiff/Appellant
Pro se

James D. "Buddy" Caldwell
Attorney General
Patricia H. Wilton
Assistant Attorney General
Baton Rouge, LA

Counsel for
Defendant/Appellee
Louisiana State Parole Board

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.



GUIDRY, J.

On March 17, 2010, the petitioner, Robert E. Bishop, filed a petition for judicial review against his parole officer, Robert Clements, and the Louisiana State Board of Parole (parole board) contesting the procedures by which his parole was revoked subsequent to his committing a new offense while released on parole. Bishop's parole was revoked effective May 19, 2009, as a result of his having signed a "Notice of Preliminary Hearing" pleading guilty to all violations alleged and waiving his right to a final revocation hearing.

In the petition for judicial review, Bishop asserted that his parole officer had misinformed him regarding the consequences of signing the waiver, and as a consequence, he mistakenly forfeited his right to any hearings before the parole board in conjunction with the revocation of his parole. Bishop sought reinstatement of his parole as his requested relief.

In turn, the parole board filed a motion to dismiss Bishop's petition, asserting that it was time barred because the petition was not filed within ninety days after the date his parole was revoked, as required by La. R.S. 15:574.11(D). Bishop "answered" the motion to explain that the reason he did not immediately file a petition for judicial review was due to the actions of his parole officer and the public defender assigned to represent him. Specifically, he alleged that his signing of the waiver was neither knowing or voluntary, because in signing the document, he was shown the following statement that was printed right below the section for his signature: "In view of the foregoing, a Preliminary Hearing has been scheduled for Tuesday, 06/02/09, at 2:30 p.m. The hearing will be conducted at the Richland Parish Detention Center." Thus, he asserted that it was not until May 26, 2009, when he received notice from the parole board that his parole was revoked, that he

realized he would not receive a revocation hearing.¹ Thereafter, Bishop alleged that his public defender wrongly advised him to file an administrative remedy procedure (ARP) to assert his complaint regarding the alleged actions of his parole officer.

A commissioner with the Nineteenth Judicial District Court, assigned to hear the matter in accordance with La. R.S. 13:713, conducted a hearing and made a recommendation to grant the parole board's motion and dismiss Bishop's petition for judicial review with prejudice at Bishop's cost. The district court signed a judgment in accordance with the commissioner's recommendation on July 7, 2011.

In appealing that judgment, Bishop urges us to restrain from giving strict adherence to the governing statutes and regulations and not to hold him to the same standard as a licensed attorney, since he represents himself. We agree that a layman who represents himself cannot be held to the same standards of skill and judgment that must be attributed to an attorney; however, a layman still must assume responsibility for his own inadequacy and lack of knowledge of both procedural and substantive law. Lapeyrouse v. Barbaree, 02-0086, p. 7 (La. App. 1st Cir. 12/20/02), 836 So. 2d 417, 422; Cutler v. McGee, 09-1290, p. 12 (La. App. 3d Cir. 5/5/10), 38 So. 3d 481, 490, writ denied, 10-1879 (La. 11/19/10), 49 So. 3d 393.

Hence, with this caveat in mind, it must be recognized that we are bound by the governing law to find there is no merit in Bishop's appeal. Although Bishop contends that he made a good faith attempt to properly contest the manner in which his parole was revoked by filing an ARP with the Department of Public Safety and Corrections (DPSC), DPSC regulations plainly state that pardon board and parole board decisions cannot be appealed through an ARP. See LAC 22:I.325(F)(3)(b).

¹ The only notice from the parole board that appears in the record on appeal is dated June 10, 2009, so it is unclear whether Bishop just referenced an incorrect date or if he received a prior notice that is not in the record before us.

Bishop acknowledges receiving a copy of the ARP regulations.² Nevertheless, he contends that because his complaint is against his parole officer and not the parole board, he understandably believed that his complaint could be addressed through the ARP.

While a mere complaint against his parole officer would be properly addressed through the ARP, the relief Bishop requests cannot, as his parole was revoked by the decision of the parole board and not merely as a result of the alleged actions of his parole officer or as a consequence of his signing the waiver. As stated in a June 10, 2009 letter to Bishop from the parole board, the parole board reviewed his file and “accepted” his guilty plea to violating the conditions of his parole.³ Furthermore, the waiver signed by Bishop stated in pertinent part: “In signing this waiver, I fully understand that I waive my rights and privileges to a final parole violation hearing before the Board of Parole, and that the Board, *in all probability*, will REVOKE my parole pursuant to La. R.S. 15:574.9A.”⁴ (Emphasis added.)

More importantly, however, is that in his petition for judicial review, Bishop pointedly contests the revocation of his parole because he was denied a revocation hearing, which he alleges was due to the actions of his parole officer. Louisiana Revised Statute 15:574.11(D) provides that petitions for review that allege a denial of a revocation hearing “shall be subject to a preemptive period of ninety days after the date of revocation by the Board of Parole.” Preemption is a period of time fixed by law for the existence of a right, which, if not timely exercised, is extinguished upon the expiration of the preemptive period. La. C.C. art. 3458.

² See La. R.S. 15:829(A).

³ The letter also states “[t]he record will reflect that you waived your final revocation hearing and your [Bishop’s] parole was thereby revoked effective 05/19/2009.”

⁴ Louisiana Revised Statute 15:574.9(A) states, in pertinent part: “A waiver shall constitute an admission of the findings of the prerevocation proceeding and result in immediate revocation.”

Moreover, peremption may not be renounced, interrupted, or suspended. La. C.C. art. 3461. Thus, despite his mistaken beliefs and the bad advice he allegedly received, once the 90-day period fixed by La. R.S. 15:574.11(D) expired, Bishop's right to file a petition for judicial review for having been allegedly "denied" a revocation hearing was extinguished.⁵ Hence, we find no error in the judgment of the district court. All costs of these proceedings are cast to the appellant, Robert E. Bishop.

AFFIRMED.

⁵ Additionally, we observe that even assuming that the 90-day preemptive period did not commence until June 10, 2009, the date of the notice of revocation from the parole board, and that the date of the filing of his petition for judicial review in the district court could somehow relate back to the date Bishop filed his ARP, since the ARP was not filed until October 2009, his action would still be deemed untimely, as even the ARP was filed in excess of 90 days from the June 10, 2009 notice from the parole board. See Brown v. LeBlanc, 10-0491, p. 5 (La. App. 1st Cir. 10/29/10), 48 So. 3d 419, 421.