

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 1661

ROBERT DEEMER

VERSUS

LINDA RAMSEY, DEPT. OF PUBLIC SAFETY & CORRECTIONS

Judgment Rendered: February 13, 2009

\*\*\*\*\*

Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Trial Court Number 537,984

Honorable R. Michael Caldwell, Judge

\*\*\*\*\*

Robert Deemer  
Lake Providence, LA

In Proper Person  
Plaintiff – Appellant

William L. Kline  
Baton Rouge, LA

Attorney for  
Defendant – Appellee  
Linda Ramsey, Secretary, La. Dept.  
of Public Safety and Corrections

\*\*\*\*\*

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

*JW*  
*RKD*  
*ME*

WELCH, J.

Appellant, Robert Deemer, a prisoner in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment dismissing his petition for judicial review of a challenge to DPSC's sentence calculation. We affirm.

### **BACKGROUND**

On December 20, 2005, Deemer filed this petition for judicial review against DPSC and its secretary, Linda Ramsey, charging that DPSC erred in calculating his sentence for an armed robbery conviction and his sentence on a conviction of attempted possession of a weapon by a convicted felon. DPSC answered, denying that its calculations were erroneous, and averring that Deemer had exhausted the available administrative remedy procedures regarding the issues alleged in his complaint. DPSC attached the administrative record to its answer.

The documents in the administrative record reflect that on September 7, 2005, Deemer wrote a letter to DPSC, in which he urged that his prison master record was incorrect and that he should have a discharge date of August 2007, rather than 2010. Appearing in the record is a bill of information dated April 27, 1987, by which Deemer was charged with armed robbery, as well as a bill of information showing that in December of 2002, Deemer was arrested on the charge of possession of a firearm/carrying a concealed weapon by a convicted felon. The administrative record also includes DPSC's master prison record, its time computation, jail credits, and release date computation information, as well as the second step response form in which DPSC rejected Deemer's time computation challenge. Therein, DPSC observed that its records indicated Deemer was released on diminution of sentence on October 22, 2000, and was to remain on supervision until completing the armed robbery sentence on March

19, 2012. However, Deemer violated the conditions of his release by committing a felony, for which he was arrested on December 14, 2002. On March 14, 2005, Deemer's parole was revoked based on the new felony conviction and sentence of four years for the charge of attempted possession of a firearm by a convicted felon. DPSC stated that as a violator, Deemer was required by law to serve the remainder of the original sentence from the date of his release from prison for that offense of eleven years, four months, and twenty-seven days, and that the correct balance was indicated on the time computation worksheet. DPSC also noted that Deemer received 793 days of jail credit on the new charge, which was applied solely to the new felony conviction, and submitted that Deemer's full term release date of May 8, 2018, was accurate, would not be amended, and that no further investigation into the matter would be conducted.

Deemer sought judicial review of DPSC's ruling. In his petition for review and in motions for judgment on the pleadings, Deemer charged that the sentence computation is inaccurate because the new sentence on the attempted weapon possession conviction was added to the calculation; however, that sentence was already completed pursuant to the terms of a plea agreement. Deemer asked that the court determine that the new sentence had been satisfied pursuant to the plea agreement and order that it be stricken from his master prison record. In support of this claim, Deemer attached to both motions copies of the **Boykin** examination at his February 14, 2005 hearing on the weapon possession charge, setting forth the terms of a plea agreement and the trial judge's imposition of a sentence in accordance with that plea agreement.

Secondly, Deemer argued that he was not required to serve any additional time on the armed robbery conviction because of a plea bargain agreement. He also charged that he was not informed that he would be on supervised release for

the remainder of the armed robbery sentence. In his final challenge, Deemer insisted that DPSC should have computed the balance remaining on the sentence for his armed robbery conviction from his parole revocation date rather than the date of his release from prison on parole.

A commissioner appointed by the district court found no error in DPSC's sentence calculation. The commissioner observed that as of the revocation date of March 2005, Deemer had a balance of nearly eleven and a half years remaining on the armed robbery conviction, and found that DPSC properly calculated the balance on that sentence from the date of Deemer's release on parole from prison on the armed robbery conviction. Therefore, the commissioner concluded, DPSC's full term release date of 2016 on that charge was correct. The commissioner then concluded that adding the four-year sentence on the new weapon possession charge, minus the 739 days of jail credit on that sentence, to the remaining time to be served on the armed robbery conviction resulted in a new full term date on both sentences of 2018, the figure arrived at by DPSC. The commissioner concluded that DPSC's calculations were in accordance with the law and mathematically correct. The commissioner did not address Deemer's argument that the sentence on the weapon possession conviction had been fully satisfied by the time he served in jail on that charge pursuant to the terms of the plea bargain agreement. However, the commissioner did find that DPSC properly credited the time served on that offense to the sentence for the weapon possession conviction and not to the remainder of the original sentence after revocation of the armed robbery conviction in accordance with the version of La. R.S. 15:574.9 in effect on the date of Deemer's parole and parole revocation.

The district court adopted the commissioner's reasons as its own, and dismissed the lawsuit with prejudice. Deemer appealed.

## DISCUSSION

Louisiana Revised Statutes 15:1177 sets forth the standard of judicial review of DPSC determinations. It provides that a court may reverse or modify the decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion; or (6) manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. La. R.S. 15:1177(A)(9)(a)-(f). On judicial review of the district court's judgment in a petition for judicial review under La. R.S. 15:1777, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court as to the factual findings or legal conclusions of the court of appeal. **Edwards v. Bunch**, 2007-1421, pp. 4-5 (La. App. 1<sup>st</sup> Cir. 3/26/08), 985 So.2d 149, 152.

Deemer challenges the calculation of the time remaining on the armed robbery conviction, urging that DPSC should have calculated the balance on the original sentence from the date of revocation of his good time release on March 14, 2005, until the original full term date for the armed robbery conviction of March 19, 2012. According to Deemer's calculations, he should only have seven years and four days to serve on the armed robbery conviction. He insists that his original full term release date of March 19, 2012, should be restored.

We find no merit in this challenge. Louisiana Revised Statutes 15:571.5 provides that a person who is released because of diminution of sentence is to be released as if on parole. La. R.S. 15:571.5(A)(1). Subsection C of La. R.S. 15:571.5 mandates that if a person's parole is revoked by the parole board for

violation of the terms of parole, the person shall be recommitted to DPSC for the remainder of the original full term. La. R.S. 15:571.5(C).<sup>1</sup> DPSC determined that as a parole violator, Deemer was required to serve the balance of time due on the armed robbery conviction from the date of his release from prison—of eleven years, four months, and twenty-seven days—and added that time to the revocation date of March 14, 2005. Thus, DPSC determined Deemer’s full term date on the armed robbery conviction to be July 10, 2016. We find no legal or mathematical error in DPSC’s calculation of the full term release date on the armed robbery conviction.

Deemer also argues that DPSC erred in adding the remainder of the sentence on the attempted possession of a firearm conviction to the new release date on the armed robbery conviction. In support of this claim, Deemer attached the sentencing transcript to two motions he filed in the district court. Deemer insists that the transcript reveals he was sentenced in accordance with a plea bargain agreement providing that he would serve no additional time on the weapon possession charge.

This claim was not presented to DPSC and was not considered by the commissioner or the district court. The Corrections Administrative Procedure Act confines the scope of a district court’s review to the record and limits review to the issues presented in the petition for review and the administrative remedy request filed at the agency level. La. R.S. 15:1177(A)(5). When reviewing DPSC’s final decision, the district court is functioning as an appellate court. **Riggins v. Kaylo**, 2005-1900, p. 3 (La. App. 1<sup>st</sup> Cir. 9/15/06), 943 So.2d 1154, 1156. As a general rule, appellate courts will not consider issues raised for the

---

<sup>1</sup> Subsection C was amended in 1991 by La. Acts, No. 138 to delete that portion of the provision which denied further diminution of sentence for good behavior upon revocation of parole by the parole board; however, the version in effect at the time Deemer was sentenced and the current version require that the person whose parole is revoked by the parole board shall be recommitted to DPSC for the remainder of the original full term.

first time on appeal. **Walston v. Lakeview Regional Medical Center**, 99-1920, p. 8 (La. App. 1<sup>st</sup> Cir. 9/22/00), 768 So.2d 238, 242-43, writ denied, 2000-2936 (La. 12/15/00), 777 So.2d 1229. Accordingly, we find no error in the district court's refusal to consider a claim for the first time that was not raised in the DPSC proceeding. See Riggins, 2005-1900 at p. 3, 943 So.2d at 1156 (holding that the district court acted properly in refusing to consider a claim that was not addressed in a DPSC proceeding).

### **CONCLUSION**

For the above reasons, the judgment of the district court dismissing the petition for judicial review is affirmed. All costs of this appeal are assessed to appellant, Robert Deemer.

**AFFIRMED.**