

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2011 CA 2193**

**SCOTT COOLEY**

**VERSUS**

**LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY AND CORRECTIONS**

Judgment Rendered: **JUN - 8 2012**

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On Appeal from the 19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 596,914, Section 27

The Honorable Todd Hernandez, Judge Presiding

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Scott Cooley  
Dequincy, Louisiana

Plaintiff/Appellant  
Pro Se

Debra A. Rutledge  
Baton Rouge, Louisiana

Counsel for Defendant/Appellee  
James Leblanc

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**BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.**

*McDonald, J. concurs.*

## **HUGHES, J.**

Scott Cooley, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment that affirmed DPSC's decision in an administrative remedy procedure and dismissed his petition for judicial review. For the reasons that follow, we affirm the judgment.

### **FACTS AND PROCEDURAL HISTORY**

Mr. Cooley filed a petition for judicial review of the final agency decision of DPSC in Administrative Remedy Procedure No. PCC-2010-0469. Therein, he challenged DPSC's denial of his eligibility for diminution of sentence (good time.) Mr. Cooley pled guilty to the crime of aggravated incest, a violation of LSA-R.S. 14:78.1, and was sentenced to 12 years imprisonment at hard labor. The offense occurred on July 15, 2002; he entered his guilty plea on April 28, 2003.

Mr. Cooley was remanded to the custody of DPSC and began serving his sentence. He received a Master Prison Record with a time computation worksheet that reflected a parole eligibility date of January 14, 2007 and a full term release date of January 16, 2015, but further indicated that he was not eligible to earn good time. Mr. Cooley filed for administrative relief on July 30, 2010, contending that the sentencing court failed to articulate that he was statutorily precluded from earning diminution of sentence pursuant to LSA-R.S. 15:537. As such, he concluded that DPSC had therefore exceeded its authority in determining "*sua sponte*"<sup>1</sup> that the statute applied to him and precluded him from earning good time.

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<sup>1</sup>Without prompting or suggestion; on its own motion. *Black's Law Dictionary*, 1437 (7<sup>th</sup> ed. 1999).

Mr. Cooley pursued the administrative remedy procedure through the required steps, but was denied relief at each level.<sup>2</sup> On November 22, 2010 Mr. Cooley filed a petition for judicial review of the final decision of DPSC in the Nineteenth Judicial District Court, pursuant to LSA-R.S. 15:1177. The court ordered that the parties submit the case on briefs. After review, the commissioner prepared a recommendation for the district court judge, in which she concluded that the DPSC decision was correct and Mr. Cooley's petition for judicial review should be dismissed.<sup>3</sup> Thereafter, the district court judge accepted the commissioner's recommendation and dismissed Mr. Cooley's petition with prejudice in a judgment dated July 18, 2011. Mr. Cooley appeals and assigns error to the interpretation of the relevant statutes such that he is not eligible to earn diminution of sentence. Mr. Cooley also assigns error to the district court's failure to apply the "rule of lenity."<sup>4</sup>

### LAW AND ANALYSIS

Louisiana Revised Statutes 15:537, amended by Acts 1999, No. 1209, states, in pertinent part:

A. **If a person** is convicted of or **pleads guilty to**, or where adjudication has been deferred or withheld for a violation of R.S. 14:78 (incest), **R.S. 14:78.1 (aggravated incest)**, R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile or a person with a physical or mental disability), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:89(A)(1)

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<sup>2</sup>Pursuant to LSA-R.S. 15:1171, DPSC has adopted and promulgated administrative remedy procedures for receiving, hearing, and disposing of complaints and grievances by offenders against the state which arise while an offender is within the custody or under the supervision of the department. Under those rules, an offender who disputes a time computation must first submit a written complaint to the warden. LAC 22:1.325(J)(1). If the offender is dissatisfied with the first step response, he may appeal to the secretary of DPSC. LAC 22:1.325(J)(2). Only after he has completed the second step may he seek review by the district court. LSA-R.S. 15:1177.

<sup>3</sup> The office of the commissioner of the Nineteenth Judicial District Court was created by LSA-R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. The commissioner's written findings and recommendations are submitted to a district court judge, who may accept, reject, or modify them. LSA-R.S. 13:713(C)(5).

<sup>4</sup> Based on the language of the statute, neither the sentencing court nor the 19<sup>th</sup> JDC had any discretion to grant Mr. Cooley eligibility for diminution of sentence.

(crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:93.5 (sexual battery of the infirm), or any provision of Subpart C of Part II of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, and is sentenced to imprisonment for a stated number of years or months, **the person shall not be eligible for diminution of sentence for good behavior.**

B. The court shall sentence a person who has on two or more occasions previously pleaded guilty, nolo contendere, or has been found guilty of violating R.S. 14:42, 42.1, 43, 43.1, 43.2, 43.3, 43.4, 43.5, 78, 78.1, 80, 81, 81.1, 81.2, 89.1, or 107.1(C)(2) to life imprisonment without the benefit of parole, probation, or suspension of sentence.

(Emphasis added.)

Under the clear wording of the statute in effect at the time Mr. Cooley committed his offense, he “shall not be eligible for diminution of sentence for good behavior.” It was not necessary that the court reference the statute applicable to his sentence. DPSC correctly calculated Mr. Cooley’s sentence pursuant to LSA-R.S. 15:537, which was amended in 1999 and in effect at the time Mr. Cooley committed the offense, as well as at the time that he was sentenced.

This is not a matter of first impression. This court has previously held that a sentencing court’s failure to articulate a statutory denial of entitlement to diminution of sentence in pronouncing sentence is irrelevant. **Jackson v. Phelps**, 86-0633 (La. App. 1 Cir. 3/4/1987), 506 So.2d 515, rehearing denied, (5/11/1987), writ denied, (La. 7/1/1987), **Nicholas v. Phelps**, 86-1662 (La. App. 1 Cir. 2/23/1988), 521 So.2d 636, 637. We can find no basis for Mr. Cooley’s argument that he should be eligible for diminution of sentence, contrary to the law, simply because the sentencing court did not specifically reference the statute, applicable as a matter of law, to the calculation of his sentence.

Likewise, we can find no basis for Mr. Cooley's argument that LSA-R.S. 15:537 only prohibits "serial sex offenders" from earning good time. The language of Section A of the statute clearly states that a person who pleads guilty to aggravated incest shall not be eligible for diminution of sentence. Thus, the statute unambiguously precludes even first-time offenders from earning good time. Section B, however, also prohibits persons who have committed certain enumerated sex offenses "on two or more occasions" from receiving the benefit of probation, parole, or suspension of sentence. This is an additional penalty for serial sex offenders. As such, while Mr. Cooley is not eligible for diminution of sentence as a first-time offender, because he is not a serial sex offender, he is still eligible for release on parole, if granted.

#### **CONCLUSION**

For the foregoing reasons, Mr. Cooley is statutorily ineligible to earn diminution of sentence pursuant to LSA-R.S. 15:537(A). The sentencing court's failure to articulate that ineligibility is irrelevant. The judgment of the district court dismissing Mr. Cooley's claim with prejudice is affirmed. All costs of this appeal are to be assessed against plaintiff/appellant, Mr. Scott Cooley.

**AFFIRMED.**