

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA


COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1800

 SHAWN ANTHONY ANDERSON

VERSUS

 JAMES LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF
CORRECTIONS, BURL CAIN, WARDEN, LOUISIANA STATE
PRISON, DONALD BARR AND LIEUTENANT COLONEL STROUD

DATE OF JUDGMENT: **MAY - 2 2012**

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 585,328, SECTION 23, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE WILLIAM MORVANT, JUDGE

* * * * *

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In Proper Person
St. Gabriel, Louisiana

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James M. LeBlanc

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: AFFIRMED.

KUHN, J.

Appellant, James M. LeBlanc, as the Secretary of the Louisiana Department of Public Safety and Corrections (the Department), appeals a district court judgment ordering the reversal and expungment of an inmate's conviction for a disciplinary violation and the reversal of a restitution award. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The petitioner-appellee, Shawn Anthony Anderson, is an inmate in the custody of the Department. At the pertinent time, he was incarcerated at Louisiana State Penitentiary (LSP). In 2008, a LSP investigation revealed that Anderson was bartering chicken dinners he obtained from the concession operated by the Students of Islam Club (the Club), of which he was a member, to other inmates for cigarettes. He then would sell the cigarettes to other inmates for cash, which was later deposited into Anderson's inmate account by friends and relatives of the inmates who purchased the cigarettes. Anderson denied that he stole the chicken, maintaining that he purchased it from the Club.

As a result of the investigation, Anderson was charged with one count of violating Rule 22 (theft) and two counts of violating Rule 30C (general prohibited behavior)¹. At the Disciplinary Board hearing, Anderson attempted to call the Club's president as a witness, along with the Club account records, but both requests were denied. Following the hearing, he was found guilty of all three of the charged rule violations. He was sentenced to custody change to maximum-extended lockdown and was ordered to pay restitution in the amount of \$1,217.50

¹ It is against Inmate Posted Policy G-25-L for an inmate to sell, barter, trade, or give away his property to another inmate.

to the Club. Anderson appealed the Disciplinary Board's decision to both the warden and the Secretary of the Department, and was denied relief at both administrative levels.

Thereafter, Anderson filed a petition for judicial review in the Nineteenth Judicial District Court. After holding several hearings on the matter, the commissioner issued a written recommendation that Anderson's conviction for violating Rule 22 (theft) be reversed and expunged, because there was no showing in the record supporting the Disciplinary Board's decision that Anderson committed theft by fraud even if he paid the Club for the chicken.² The commissioner noted that, despite the fact that theft by fraud under Rule 22 "requires an inmate to make a representation of fact in order to secure a material return," the Disciplinary Board found Anderson guilty of violating the rule without any showing that he made any misrepresentations of fact in this matter. The commissioner further recommended that the award of restitution also be reversed as an arbitrary administrative decision unsupported by evidence in the record. Finally, the commissioner recommended that Anderson's two convictions for violating Rule 30C not be disturbed, along with the sanction of custody change, which did not violate a substantial right of Anderson.

By judgment dated July 20, 2011, the district court granted Anderson's request for judicial review and, in accordance with the commissioner's recommendation, ordered that Anderson's conviction for violating Rule 22 (theft)

² The case was assigned to a commissioner to conduct all proceedings and make a recommendation to the district court. This procedure is utilized in the Nineteenth Judicial District Court to handle the large volume of inmate lawsuits filed pursuant to La. R.S. 15:1177(A). See La. R.S. 13:713; *Plaisance v. Louisiana State Penitentiary*, 10-1249 (La. App. 1st Cir. 2/11/11), 57 So.3d 593, 594 n.2.

be reversed and expunged.³ Finding that the restitution award was an arbitrary decision unsupported by the administrative record, the judgment further ordered that the award of restitution be reversed, and that the Department pay all costs. The district court adopted the commissioner's extensive report as its reasons for judgment. The Department now appeals.

DISCUSSION

The Department contends that the district court erred in concluding that the amount of the restitution award constituted a substantial rights violation sufficient to confer subject matter jurisdiction upon the court in a disciplinary appeal. Citing *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), the Department argues that a substantial right violation for purposes of disciplinary appeals is limited to one in which the inmate's liberty interest or due process rights are affected, and it must be a "dramatic departure" from the basic conditions of prison life. The Department further argues that the district court's review is limited by La. R.S. 15:1177(A)(9) to disciplinary actions where "substantial rights of the appellant have been prejudiced." Citing its own departmental regulations⁴, the Department contends that the imposition of restitution is not a disciplinary penalty and, therefore, cannot be reviewed in conjunction with a disciplinary appeal, since it does not affect an inmate's substantial rights. It is the Department's position that any appeal or challenge to the amount of restitution must be taken separate and apart from the disciplinary appeal, following

³ The judgment contains a typographical error in that it incorrectly refers to the rule pertaining to theft as "Rule 11" rather than "Rule 22."

⁴ See, e.g., LAC 22:I:353(A) (stating that restitution "is not considered a disciplinary penalty and may be assessed in addition to any other permissible penalties") and LAC 22:I:361(C)(3) (providing that appeals of the amount of restitution may be taken to the secretary of the department in accordance with the procedure provided by departmental regulation).

specialized restitution appeal procedures provided by departmental regulation, and that Anderson failed to follow those specialized procedures.⁵

Under Louisiana Revised Statutes 15:1177(A), an inmate aggrieved by a disciplinary action of the Department may seek judicial review of the “adverse decision” in the Nineteenth Judicial District Court. See *Victorian v. Stalder*, 99-2260 (La. App. 1st Cir. 7/14/00), 770 So.2d 382, 384 (*en banc*). Moreover, although the Department strenuously argues that restitution is not a “disciplinary penalty,” La. R.S. 15:875(D) specifically provides that the determination of restitution “shall be by disciplinary proceeding.” See La. R.S. 15:875(D). While this provision further provides that those disciplinary proceedings should be conducted in accordance with departmental regulations, the disciplinary nature of the proceedings cannot be altered by those regulations.

The standard of review to be applied by the district court is set forth in La. R.S. 15:1177(A)(9), which provides that:

The court may reverse or modify the decision **only if substantial rights of the appellant have been prejudiced** because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional or statutory provisions.
- (b) In excess of the statutory authority of the agency.
- (c) Made upon unlawful procedure.
- (d) Affected by other error of law.
- (e) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

⁵ We note that, even if Anderson did fail to follow the specialized procedures for a restitution appeal provided by departmental regulations, the Secretary of the Department nevertheless reviewed both the basis for and the amount of the restitution imposed upon Anderson in Disciplinary Appeal Number LSP-2008-0500, which the Secretary denied on October 14, 2009.

(f) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues. [Emphasis added.]

Contrary to the Department's assertions, this statutory provision does not divest the district court of subject matter jurisdiction over a petition for judicial review. It merely limits the available remedies, should the district court determine, upon review of the facts that the matter does not involve any violation of or prejudice to "substantial rights" of the inmate. *Plaisance*, 57 So.3d at 595. Thus, irrespective of the merits of Anderson's petition for judicial review, the district court clearly had jurisdiction to consider the petition.

Furthermore, we conclude that the imposition of a restitution award of \$1,217.50 upon an inmate does, in fact, affect his substantial rights. We find no merit in the Department's contention that the imposition of restitution only affects the quality of an inmate's confinement, in which it has been held an inmate has no liberty or due process interest. Once the Department orders restitution, La. R.S. 15:874(4)(e) allows the Department to withdraw funds from an inmate's prison account to satisfy the restitution award. See also 15:875(E) (authorizing the Department to freeze an inmate's account until restitution is paid). Money in an inmate's prison account is protected property of the inmate, thus requiring due process of law. See U.S. Const. Art. XIV; La. Const. art. I, §4; see also *Longmire v. Guste*, 921 F.2d 620, 623-24 & 624 n.3 (5th Cir. 1991) (*per curiam*). Therefore, the Disciplinary Board decision ordering restitution in the amount of \$1,217.50 clearly affected a substantial property right of Anderson. Hence, the

judgment rendered by the district court was within the scope of La. R.S. 15:1177(A)(9).

CONCLUSION

For the reasons assigned, the judgment of the district court rendered on July 20, 2011, is affirmed. All costs of this appeal, in the total amount of \$2,333.44, are assessed against the Department.

AFFIRMED.