

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

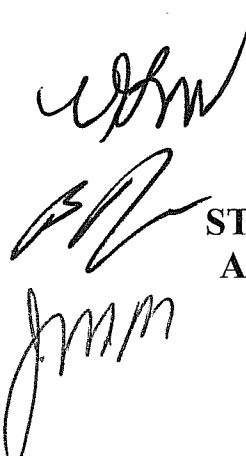
COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1178

STEPHON GRAVES

VERSUS

 **STEVE RADAR, WARDEN, DIXON CORRECTIONAL INSTITUTE;
ASSISTANT WARDEN KENNETH BOOTY, UNIT II DCI; MAJOR
BELL, UNIT II; DR. ALLEN PEREGO, MEDICAL DIRECTOR;
COLONEL THOMAS, UNIT II; LIEUTENANT SHANNON
ROGERS, UNIT II AND ALL EMPLOYEES OF DIXON
CORRECTIONAL INSTITUTE**

Judgment Rendered: May 4, 2007

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 526,773**

Honorable Timothy E. Kelley, Judge Presiding

**Stephon Graves
Jackson, LA**

Plaintiff/Appellant, pro se

**Tunde M. Anima-Shaun
Baton Rouge, LA**

**Counsel for Defendants/Appellees,
Warden Steve Radar, Assistant
Warden Kenneth Booty, Major
Bell, Dr. Allen Perego, Colonel
Thomas and Lieutenant Rogers**

BEFORE: CARTER, C.J. WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

This is an appeal from a judgment of the Nineteenth Judicial District Court in East Baton Rouge Parish. Plaintiff, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the DPSC) at Dixon Correctional Institute, appeals the district court's dismissal of his petition for judicial review of the DPSC's disciplinary action against him.

After being involved in an altercation with another inmate, plaintiff was administered a drug screen, and he tested positive for marijuana. The Disciplinary Board found plaintiff guilty of a rule violation and sentenced him to a penalty of loss of 180 days of good time, a custody change to the working cell block and restitution in the amount of \$10.50 for the cost of the drug screen. Plaintiff's subsequent appeals to the warden and the DPSC were denied.

In the district court below, plaintiff contended that the drug screen indicated a false positive due to medication that he was taking at the time of the incident. He further contended that the urine sample should have been sent to an outside laboratory to establish that the alleged false positive resulted from other medication he was taking.

However, as noted by the commissioner in his recommendation to the district court, which we attach hereto as Appendix A, the Inmate Drug/Alcohol Testing Policy 3A-026, which was in place at Dixon Correctional Institute, provides the procedure for use of an outside laboratory for confirmatory testing. Specifically, the policy provides that "[t]he medical department will review all prescribed medication as well as over-the-counter canteen purchases to rule out the possibility of a false positive" and that "[i]f it is determined that the inmate has taken medication that could cause a false positive, the stored sample will be sent to an outside

laboratory for confirmation.” In the instant case, both plaintiff’s medical records and the record of his canteen purchases failed to reveal any medication that could result in a false positive drug screen. Accordingly, there is no merit to plaintiff’s contention that a confirmatory test by an outside laboratory should have been performed.¹

Based upon our review of the record and pursuant to LSA-R.S. 15:1177(A)(9), we do not find that the Disciplinary Board’s action was arbitrary, capricious, manifestly erroneous or in violation of plaintiff’s constitutional or statutory rights. Thus, we find no error in the district court’s judgment dismissing plaintiff’s petition for judicial review. In accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B), the judgment is affirmed. Costs of this appeal are assessed against plaintiff, Stephon Graves.

AFFIRMED.

¹On appeal, plaintiff contends that he was denied the opportunity to establish before the Disciplinary Board that he had obtained the medication which allegedly caused a false positive drug screen from another person, rather than the infirmary or the canteen. Pursuant to the Corrections Administrative Remedy Procedure Act, which applies to disciplinary appeals, LSA-R.S. 15:1171(B) and Victorian v. Stalder, 99-2260 (La. App. 1st Cir. 7/14/00), 770 So. 2d 382, 384, review of a decision by the agency shall be conducted by the court without a jury and shall be limited to the record. The review shall also be limited to the issues presented in the petition for review and the administrative remedy request filed at the agency level. Lightfoot v. Stalder, 2000-1120 (La. App. 1st Cir. 6/22/01), 808 So. 2d 710, 715, writ denied, 2001-2295 (La. 8/30/02), 823 So. 2d 957.

Plaintiff did not contend in either his request for administrative remedy, his appeals at the agency level or his petition for judicial review that he had obtained medication from another individual. Additionally, we note that in the district court proceedings, plaintiff filed a document in which he contended that all the medication he had obtained was from the Dixon Correctional Institute Infirmary, not from another individual as he now contends.

Moreover, we note that the Inmate Drug/Alcohol Testing Policy 3A-026, which sets forth a procedure for determining if a false positive was caused by medication, by its terms applies only to medication obtained from the infirmary or the canteen. For obvious reasons, this policy does not extend to medications allegedly obtained from others. Accordingly, even if we were to find that this issue was properly before us, we find no merit to plaintiff’s argument.

STEPHON GRAVES

*** NO. 526,773 - SECTION: 22**

*** 19TH JUDICIAL DISTRICT COURT**

vs.

*** PARISH OF EAST BATON ROUGE**

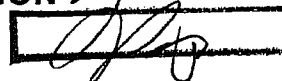
STEVE RADAR, WARDEN, ET AL

*** STATE OF LOUISIANA**

POSTED

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COMMISSIONER'S RECOMMENDATION



The petitioner initially filed a request seeking review of multiple claims and pursuant to a preliminary screening order dated December 14, 2004 the petitioner filed a pleading advising the Court he wished to seek review of Disciplinary Board Appeal No. DCI-2004-204. The defendants responded by filing the administrative record under Disciplinary Board Appeal No. DCI-2004-204, which indicates the petitioner was convicted of a violation of Rule #1 – Contraband after the petitioner tested positive for marijuana. The administrative record evidences the petitioner initially tested positive using a BMC Tox Cup test and the positive result was confirmed using the Fastest #2 Test Stick. The petitioner's disciplinary board imposed a penalty of a loss of 180 days good time and a custody change.

In his appeal of his disciplinary board conviction the petitioner contends that the false positive result was obtained on his drug screen due to medications the petitioner was currently taking and that the petitioner requested the samples be sent to an outside lab for further testing. The petitioner contends he signed documentation allowing the sample to be sent to an outside lab for further testing but received no indications that the defendants forwarded the sample to an outside lab. This matter was set for oral argument on the petitioner's request for judicial review and following the argument in this matter the defendants were ordered to supplement the administrative record with information regarding any policy established by the defendants which allows an inmate to send the results of a drug screen to an outside lab for analysis. This

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Commissioner notes the defendants have complied with the prior order of this Court by filing a notice of compliance on August 8, 2005.

Initially this Commissioner notes the administrative record filed in this matter indicates the defendants investigated the petitioner's contention his positive drug screen was caused by medications. The administrative record contains a memo from Pharmacist Ken Chapman, which indicates that a review of the petitioner's medical records indicated the petitioner was not taking any medication from the pharmacy as of September 23, 2004 that would have caused a false positive drug screen. The memo is also signed by Dr. Perego, the Medical Director of the petitioner's institution and attached is a listing of the petitioner's medications from the time of the incident. The administrative record also contains documentation regarding the petitioner's canteen transactions for the two weeks prior to the date of the drug screen, which does not indicate the purchase of any over the counter medications. The administrative record filed in this matter does not support the petitioner's contention that a false positive drug screen was caused by a medication the petitioner was taking at the time of the incident.

Additionally, the defendants have supplemented the record in this matter with a copy of Inmate Drug/Alcohol Testing Policy 3A-026 which is in place at the petitioner's institution. The policy provides that where the medical staff has indicated a false positive may be the result of an inmate's medications, the sample will be sent to an outside lab for further analysis. (see Section IV-use of results) As indicated by the record in this matter the medical staff at the petitioner's institution determined the petitioner was not taking any medication that would cause a false positive drug screen for marijuana and the petitioner's drug screen sample was not sent to an outside facility for testing. The petitioner has failed to show that the policy of his institution required the defendants to obtain an analysis from an outside lab prior to finding the petitioner guilty of his

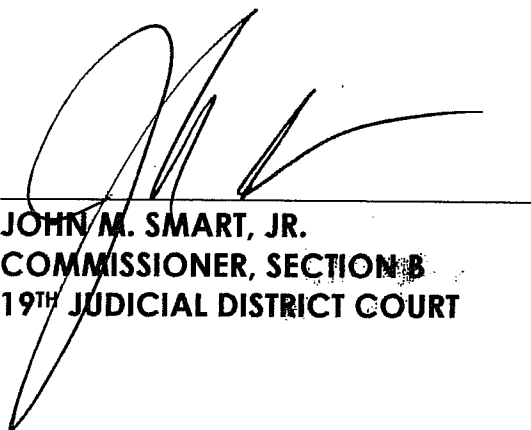
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disciplinary offense. The petitioner fails to show the denial of his disciplinary appeal should be disturbed on judicial review.

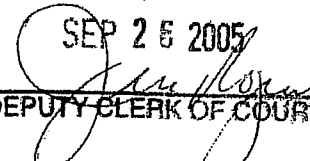
It is the recommendation of this Commissioner that the final agency decision rendered in this matter be affirmed and the instant request for judicial review be dismissed with prejudice at the petitioner's cost.

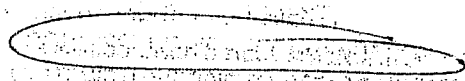
Respectfully recommended this 20th day of Sept

2005.



JOHN M. SMART, JR.
COMMISSIONER, SECTION B
19TH JUDICIAL DISTRICT COURT

FILED
SEP 26 2005

DEPUTY CLERK OF COURT


all parties 9-27-05
