

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0949

TERRY JAMES GILBERT

VERSUS

**RICHARD STALDER, SECRETARY, DEPARTMENT
OF CORRECTIONS**

Judgment Rendered: March 28, 2007

On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge, State of Louisiana
Trial Court No. 528,614 Section "E"

Honorable William A. Morvant, Judge Presiding

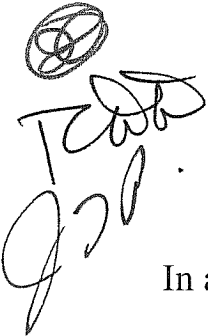
Terry James Gilbert,
Winnfield, LA

Plaintiff/Appellant
In Proper Person

William Kline
Baton Rouge, LA

Counsel for Defendant/Appellee
Department of Corrections

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.



HUGHES, J.

In this case, petitioner Terry James Gilbert, an inmate in the custody of the Department of Public Safety and Corrections ("DPSC"), sought review of Administrative Remedy Procedure No. WNC-04-1543. In that procedure, DPSC denied Mr. Gilbert's request for good time based upon a second conviction of a crime of violence (second degree cruelty to juveniles, committed in 2003) pursuant to La. R.S. 15:571.3. Following a *de novo* review of the record, including the traversal by Mr. Gilbert and the Commissioner's Report, the trial court maintained the decision by DPSC, dismissing Mr. Gilbert's suit with prejudice. This appeal followed.

After a thorough review of the record and relevant jurisprudence, we find that **George v. Baker**, 99-0234 (La. App. 1 Cir. 11/5/99), 746 So.2d 783, is controlling precedent concerning the application of Act 150 of 1994, which amended La. R.S. 15:571.3(D) to deny good time credit to an inmate in custody who has committed a second offense crime of violence. Mr. Gilbert seeks to distinguish **George** by arguing that his previous offense, an armed robbery committed on March 28, 1992 should not be considered a crime of violence because it occurred prior to Act 1015 of 1992 (effective August 21, 1992), which categorized offenses into crimes of violence and other crimes. But the rule in **George** is that "the relevant offense is the current crime, not the predicate crime....Act 150 has been in effect since August 1994. Thus, petitioner was on notice of the consequences of a second conviction of a crime of violence before he committed the [second offense]." *Id.* at 6, 746 So.2d at 786.

Pursuant to this reasoning, Mr. Gilbert had ample time, over ten years, to become aware of the fact that his 1992 conviction would result in a denial of good time should he be convicted for a second crime of violence, as he

was in 2003 for the offense of second degree cruelty to juveniles. Because **George** controls this inquiry, we find no error in the trial court's judgment.

Mr. Gilbert further argues that his second offense, the 2003 conviction for second degree cruelty to juveniles, should not be held against him as a crime of violence because it became effective through Act 637 of 2003 as an addition to the list of violent crimes in La. R.S. 14:2(13) just five days (August 15, 2003) prior to his commission of the offense (August 20, 2003). Mr. Gilbert claims he thus could not possibly have fairly been on notice that commission of the offense would be counted as a crime of violence such that his access to good time credit would be denied. Although the dates are indeed close, Act 637 became effective law on August 15, 2003 and Mr. Gilbert became bound by its substance regardless of his actual knowledge of its existence.

Therefore, we affirm the trial court's judgment in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B. All costs associated with this appeal are assessed against petitioner, Terry James Gilbert.

AFFIRMED.