

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 0035

TONY MOORE

VERSUS

**HUNT CORRECTIONAL CENTER; WARDEN HUBERT; RICHARD
STALDER, SECRETARY; BOARD OF PAROLE; AND STATE OF
LOUISIANA**

Judgment Rendered: September 14, 2007

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 531,529**

Honorable Donald Johnson, Judge Presiding

**Tony Moore
Pineville, LA**

Plaintiff/Appellant, pro se

**William Kline
Baton Rouge, LA**

**Counsel for Defendant/Appellee,
Louisiana Department of Corrections**

BEFORE: WHIPPLE, GUIDRY AND HUGHES, JJ.

Hughes, J., concurs with reasons.

WHIPPLE, J.

This is an appeal by Tony Moore, an inmate in the custody of the Louisiana Department of Corrections, from a judgment of the Nineteenth Judicial District Court, dismissing his petition for writ of habeas corpus. In his petition, Moore contended that he is currently incarcerated in Louisiana following a transfer from Texas, but he has never had his parole revoked. Specifically, Moore contended that following a revocation hearing before the Texas Board of Pardons and Paroles, the Texas Board recommended that Moore be returned to Louisiana. According to Moore's petition, upon his return to Louisiana, the Louisiana Parole Board then conducted a hearing on March 24, 2005. However, Moore averred that he has been incarcerated, but the Louisiana Parole Board never rendered a decision revoking his parole. Thus, in his petition, Moore requested that the district court either order the Louisiana Parole Board to rule on the evidence provided by the Texas Board of Pardons and Paroles or release him and continue him on parole.

In a screening report, the commissioner concluded that while the revocation hearing held in Texas may be considered Moore's preliminary hearing, he had not yet had his final revocation hearing. The commissioner further noted that LSA-R.S. 15:574.11 provides that a parolee can seek judicial review only of a revocation decision that violates the provisions of LSA-R.S. 15:574.9 (addressing the procedure to be utilized for parole revocation). See LSA-15:574.11(C). The commissioner further noted that LSA-R.S. 15:574.11(D) imposes a preemptive period of ninety days for seeking review of the denial of a revocation hearing.

The commissioner then concluded that Moore's request for relief was premature as there had not yet been a final revocation hearing. According to the commissioner's report, if Moore wished to complain about the Louisiana

Parole Board's delay in conducting a final revocation hearing, he should file a request for mandamus relief. Based on these findings, the commissioner concluded that Moore had failed to state a cause of action and recommended that Moore's suit be dismissed with prejudice at his cost without service on defendants and without the opportunity to amend his petition.

The district court adopted the commissioner's report and rendered judgment on April 12, 2006, dismissing Moore's suit with prejudice based on an exception of no cause of action raised *ex proprio motu* and ordering that Moore not be allowed the opportunity to amend. From the April 12, 2006 judgment, Moore appeals.

At the outset, we note that on November 16, 2006, this court granted Moore's writ application and reversed the trial court's April 12, 2006 judgment, stating as follows:

The trial court's judgment of April 12, 2006, is reversed, and the case is remanded to consider the Writ of Mandamus that [Moore] filed on October 16, 2006, seeking action on the parole revocation hearing as directed by the Commissioner. We note that the district court record reflects the filing of the Writ of Mandamus but that court is unable to locate a copy of the pleading. Therefore, relator is directed to submit a copy of the Writ of Mandamus to the district court on or before December 18, 2006.

Moore v. Louisiana Parole Board, 2006 CW 1286 (La. App. 1st Cir. 11/16/06). Given this court's November 16, 2006 action reversing the district court's April 12, 2006 judgment, this appeal is now moot. A moot case is one which seeks a judgment or decree which, when rendered, can give no practical effect. United Companies Lending Corporation v. Hall, 97-2525 (La. App. 1st Cir. 11/6/98), 722 So. 2d 48, 50. In the instant case, because this court has previously reversed the April 12, 2006 judgment on appeal, further action on that judgment by this court is not required and would have no practical effect. Accordingly, we preterm consideration of

the issues raised by Moore's appeal as moot. See United Companies Lending Corporation, 722 So. 2d at 51.

CONCLUSION

For the above and foregoing reasons, we conclude that all issues presented on appeal are moot, and, accordingly, this appeal is dismissed. Given the procedural posture of this appeal and Moore's status as a pauper, we decline to assess costs.

APPEAL DISMISSED AS MOOT.

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HUGHES, J., concurring

I respectfully concur and hope that this court's action of 11/16/06 granting the writ application will be honored and thus prevent further litigation.