

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA


COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1320

TRAVIS JEROD RICHARDSON

VERSUS

 JERRY GOODWIN, WARDEN  
DAVID WADE CORRECTIONAL CENTER, BRENDA  
ACKLIN AND JAMES LEBLANC, SECRETARY,  
LOUISIANA DEPARTMENT OF CORRECTIONS

Judgment Rendered: February 11, 2011

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On Appeal from the  
19th Judicial District Court,  
In and for the Parish of East Baton Rouge,  
State of Louisiana  
Trial Court No. 573,742

Honorable Kay Bates, Judge Presiding

\* \* \* \* \*

Travis J. Richardson  
Homer, LA

Plaintiff-Appellant,  
in Proper Person

Susan Wall Griffin  
Baton Rouge, LA

Attorney for Defendant-Appellee,  
James LeBlanc, Secretary, Louisiana  
Department of Public Safety and  
Corrections

\* \* \* \* \*

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

**HIGGINBOTHAM, J.**

Plaintiff-appellant, Travis Richardson, an inmate in the custody of defendant-appellee, the Department of Public Safety and Corrections (the Department),<sup>1</sup> appeals the district court's judgment affirming his classification as a second felony offender. We affirm.

Plaintiff filed a petition for judicial review under LSA-R.S. 15:1177, complaining that the Department incorrectly classified him as a second felony offender. The district court reviewing the Department's decision, after a *de novo* review of the record, adopted the Commissioner's Recommendation and affirmed the Department's decision. Plaintiff appeals arguing that the district court was erroneous because it failed to recognize that he had been granted a new trial on his second conviction.

Plaintiff was convicted of simple robbery and sentenced to hard labor and was subsequently charged with and found guilty of first degree robbery and sentenced to twenty-five years imprisonment at hard labor. Plaintiff appealed his conviction and sentence for the first degree robbery. In an unpublished opinion, without vacating his conviction, this court vacated plaintiff's sentence finding that the sentencing court had failed to dispose of a pending motion for new trial and for post-verdict judgment of acquittal prior to sentencing. See State v. Richardson, 04-0365 (La. App. 1st Cir. 10/29/04)(unpublished). The case was remanded to the sentencing court for further proceedings in accordance with this court's ruling.

At the remand hearing on November 30, 2004, the sentencing court orally granted plaintiff's motion for new trial and denied the motion for post judgment acquittal, stating that it was granting the new trial because it had been directed to

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<sup>1</sup> In his pleading, plaintiff incorrectly identified the Department as the Department of Corrections. He also named Jerry Goodwin and Brenda Acklin in their respective official capacities as representatives of the Department. And James LeBlanc appeared in this litigation as Secretary of the Department.

do so by this court. There is however no written judgment in the record granting the new trial.

On February 3, 2005, plaintiff once again appeared before the sentencing court.<sup>2</sup> Realizing that on November 30, 2004, it had misinterpreted this court's remand order, the sentencing court entered a new ruling and denied plaintiff's motion for new trial, disposed of all other pending motions, and vacated the prior sentence. The sentencing court then resentenced plaintiff to twenty-five years imprisonment at hard labor. On appeal of that sentence, this court affirmed. See State v. Richardson, 06-0250 (La. App. 1st Cir. 11/3/06) 941 So.2d 198 (table)(unpublished).

In his petition for judicial review, plaintiff designated two assignments of error, both of which contend that his second felony conviction was vacated when the sentencing court orally granted a new trial on November 30, 2004. In so concluding, plaintiff correctly points out that the sentencing court did not explicitly vacate the November 30, 2004 granting of a new trial at the February 2005 hearing.

Our review of the record shows that in denying the motion for new trial, the sentencing court stated "that there are no grounds [for] which a new trial should be granted." Thus, it is clear that the sentencing court effectively reconsidered its oral ruling of November 30, 2004, and reversed itself on February 3, 2005. Therefore, plaintiff's sentence on his second felony conviction was never vacated. As such, the district court correctly concluded that plaintiff was properly classified by the Department as a second felony offender.

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<sup>2</sup> The sentencing court had previously attempted to rule on plaintiff's outstanding motions in February 2004; however, these rulings were declared a nullity by this court because at that time the sentencing court no longer had jurisdiction to hear the motion since the case was on appeal. See Richardson, 04-0365 at p.4 n.1.

Accordingly, plaintiff's assignments of error are without merit, and the ruling of the district court is affirmed. All costs associated with this appeal are assessed against plaintiff-appellant, Travis Richardson.

**AFFIRMED.**