

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 0360

VIDALE G. TASBY

VERSUS

CATHY ROBERTS

*J.G.P.
TAW*

Judgment rendered June 6, 2008

Appealed from the
Nineteenth Judicial District Court
Parish of East Baton Rouge, Louisiana
Trial Court No. 524,898
The Honorable Timothy E. Kelley

VIDALE G. TASBY
ANGOLA, LA

MELINDA L. LONG
BATON ROUGE, LA

PLAINTIFF/APPELLANT
IN PROPER PERSON

ATTORNEY FOR
DEFENDANT/APPELLEE
LOUISIANA DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS

BEFORE: CARTER, C.J., PETTIGREW AND WELCH, JJ.

Carter C.J. concurs by TAW

PETTIGREW, J.

Vidale G. Tasby, an inmate in the custody of the Department of Public Safety and Corrections, filed a petition for judicial review of an administrative decision prohibiting him from receiving certain magazines he had subscribed to while housed at the Louisiana State Penitentiary at Angola, Louisiana. The record indicates that Mr. Tasby received the final agency decision on June 14, 2004; however, he did not file his petition for judicial review until September 30, 2004. This was well outside the thirty-day time period for filing such requests established by LSA-R.S. 15:1177(A), which provides, in pertinent part:

A. Any offender who is aggrieved by an adverse decision ... by the Department of Public Safety and Corrections ... rendered pursuant to any administrative remedy procedures under this Part may, within thirty days after receipt of the decision, seek judicial review of the decision only in the Nineteenth Judicial District Court¹

At the hearing on the matter, the Commissioner raised the issue of timeliness *ex proprio motu*, and gave Mr. Tasby thirty days to provide evidence demonstrating that he had filed his complaint timely. Despite this additional time, Mr. Tasby failed to provide any additional evidence to the court. Accordingly, the Commissioner recommended that the petition for judicial review be dismissed for lack of subject matter jurisdiction. After a careful *de novo review* of the entire record, the district court rendered judgment dismissing Mr. Tasby's petition for judicial review, without prejudice, adopting as its reasons the Commissioner's written report. Mr. Tasby has appealed.

After a thorough review of the record, we find no error in the judgment of the district court, and we affirm the judgment of the district court in accordance with Uniform Rules-Courts of Appeal 2-16.1B. We further adopt the Commissioner's Report, which is attached hereto as Exhibit A, as our own analysis. All costs of this appeal are assessed to Vidale G. Tasby.

AFFIRMED.

¹This thirty-day period has been held to be peremptive, rather than prescriptive. See Carter v. Lynn, 93-1583 (La. App. 1 Cir. 5/20/94), 637 So.2d 690.

EXHIBIT A

VIDALE TASBY

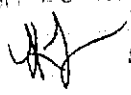
NUMBER: 524,898 SECTION 22

VS.

19TH JUDICIAL DISTRICT COURT

CATHY ROBERTS

SEP 25 2007



PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COMMISSIONER'S REPORT

The Petitioner, an inmate in the custody of the Department of Public Safety and Corrections, originally filed this suit for judicial review of administrative record #LSP-03-3158, seeking review in accordance with R.S. 15:1171 et seq. The Department filed the administrative record as Exh. A and B (the ARP record and copies of the cover of FHM magazine under seal, respectively). The administrative record shows that the Petitioner received the final agency decision on June 14, 2004 and that he did not file this appeal until September 30, 2004, more than 30 days thereafter. In addition, he did not even sign his petition until September 21st 2004, also well more than the 30 days allowed.

Oral argument was held on June 19, 2007, at which time the Petitioner was present and the Department was represented by Counsel, Ms. Terry Cannon. At that hearing, the Court raised the issue of timely appeal ex proprio motu as timeliness affects the jurisdiction of this Court. Upon request, the Court gave the Petitioner 30 days to provide Court and Counsel with proof in the record that he had timely filed this complaint. To date--more than 30 days later--the Petitioner has filed no evidence to be considered.

Therefore, this Report is issued for the Court's de novo consideration and adjudication on the validity of the rejection by the administration and/or the procedural bar of time limitations.

ANALYSIS OF THE FACTS AND LAW

This Court's review is limited by statute and preemptive time period therein, R.S. 15:1177(A), which states as follows in pertinent part:

A. Any offender who is aggrieved by an adverse decision by the Department of Public Safety and Corrections ...pursuant to any administrative remedy procedures under this Part may, **within 30 days after receipt of the decision**, seek judicial review of the decision only in the 19th Judicial District Court.

In this case, the Petitioner challenges the Department's denial of a magazine he subscribed to while housed at LSP on the basis that it was a violation of his constitutional rights. At the oral argument, the Petitioner acknowledged that he is no longer housed at LSP and that he no longer subscribes to the magazine in question. However, he stated that LSP still has his magazines, and on that basis his claim is not moot.




19th JUDICIAL DISTRICT COURT

However, this Court has no jurisdiction to address the merits of this appeal because it was not filed timely. Based on applicable statute and jurisprudence, dismissal would be appropriate for lack of subject matter jurisdiction, when the appeal is considered untimely to this Court. ¹ R.S. 15:1177A above sets the 30-day peremptory time limit for all administrative appeals. And since the 30-day time period is peremptory, by law it is not subject to interruption or suspension for any reason or excuse, including the one offered here.² Although, the First Circuit affirmed a dismissal under like circumstances, on the basis of an exception of no cause of action in the *Carter* case, *infra*, failure to timely file a suit for judicial review has also been held to deprive this Court of jurisdiction to hear the complaint.³ In either case, the appeal is untimely on the face of the record and must be dismissed.

COMMISSIONER'S RECOMMENDATION

Therefore, after a careful consideration of the administrative record, and the law applicable, for reasons stated, I recommend that, based on the face of the record, the appeal be dismissed for lack of subject matter jurisdiction, being filed more than 30 days after receipt of the final agency decision.

Respectfully recommended this ^{August} 20 day of ~~July~~, 2007, at Baton Rouge, Louisiana.


RACHEL P. MORGAN,
COMMISSIONER, SECTION A
NINETEENTH JUDICIAL DISTRICT COURT

HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS/JUDGMENT/ORDER/COMMISSIONER'S RECOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED TO ALL PARTIES AND SIGNED THIS 21 DAY OF Aug 20 07
Richard C. Baum
DEPUTY CLERK OF COURT

FILED
AUG 20 2007
Richard C. Baum
SECTION A

¹ See R.S. 15:1177A, setting a 30 day peremptive period for filing this appeal, and See *Blackwell v. DPS&C* 690 So2d 137 (1st Cir. 1997) (reversed on other grounds); See also *Carter v. Lynn*, 637 So2d 690 (1st Cir. 1994).
² See *Carter v. Lynn* 637 So2d 690 (1st Cir, 1994).
³ See *Blackwell v. DPS&C* 690 So2d 137 (1st Cir. 1997).

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