

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2008 CA 0947**

**WARREN SMITH**

**VERSUS**

**LYN PIGOT, ET AL, CORRECTIONS RECORDS MANAGER II,  
IVY MORRIS, INMATE RECORDS,  
LINDA RAMSAY, ET AL,  
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONS**

*Judgment Rendered: December 23, 2008*

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**Appealed from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Case No. 535046**

**The Honorable Wilson Fields, Judge Presiding**

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**Warren Smith  
Angie, Louisiana**

**Plaintiff/Appellant  
In Proper Person**

**Jonathan R. Vining  
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellee  
Richard Stalder, Secretary  
Department of Public Safety and  
Corrections, et al**

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**BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.**

**GAIDRY, J.**

This appeal is from a judgment dismissing a prisoner's petition for judicial review. We affirm.

**FACTS AND PROCEDURAL HISTORY**

The plaintiff, inmate Warren Smith, appeals a trial court judgment dismissing with prejudice his petition for judicial review of his Administrative Remedy Procedure ("ARP") Number WCI-05-408. In his ARP, Smith complained that the Department of Public Safety and Corrections ("DPSC") was improperly calculating his good time credits and release date.

Smith is serving a 75-year sentence for a 1977 arrest/conviction for armed robbery.<sup>1</sup> He escaped from custody for 79 days in 1980. Smith's 75-year sentence was later vacated and he was resentenced in 1994 to his original 75-year sentence. At the time of his resentencing, La. R.S. 15:571.3, as amended by Act 138 of the 1991 Legislature, provided for good time at a rate of 30 days of good time credit for every 30 days served. Although Smith initially declined good time credit, in 1997 he opted to receive good time credit under Act 138. Following his resentencing in 1994, Smith's sentence was calculated using his time in custody prior to the resentencing as jail credit. DPSC calculated Smith's entire 75-year sentence under Act 138, giving Smith full credit for good time earned from the date of his arrest in 1977.

Under DPSC's calculations, applying good time credits under Act 138 back to his original date of arrest, and subtracting time out of custody during

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<sup>1</sup> Smith was also sentenced to serve 50 years for attempted murder concurrently with the 75-year sentence, but we only discuss the 75-year sentence in this opinion as it is the one that controls his release date.

his escape and 120 days of good time forfeited for various disciplinary actions, Smith's anticipated good time release date is 11/22/2015.

Smith alleges that the DPSC erred in applying the provisions of Act 138 to his original 75-year sentence and that the good time credits of Act 138 should be applied to the balance owed on his sentence at the time of his 1994 resentencing. Smith alleges that his good time release date should be in 2005, rather than 2015.

After exhausting his administrative remedies, Smith filed a petition for judicial review. The commissioner found that the Agency's decision was correct mathematically, factually, and legally, and was not arbitrary or in violation of any of Smith's rights, and therefore recommended that Smith's petition for judicial review be dismissed with prejudice at his cost. The court rendered judgment in accordance with the commissioner's recommendation, and Smith filed the instant appeal.

### **DISCUSSION**

Louisiana Revised Statutes 15:1177, which governs judicial review of administrative acts, provides in part:

A. Any offender who is aggrieved by an adverse decision, excluding decisions relative to delictual actions for injury or damages, by the Department of Public Safety and Corrections or a contractor operating a private prison facility 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 Court or, if the offender is in the physical custody of the sheriff, in the district court having jurisdiction in the parish in which the sheriff is located, in the manner hereinafter provided:

.....

(9) The court may reverse or modify the decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional or statutory provisions.
- (b) In excess of the statutory authority of the agency.
- (c) Made upon unlawful procedure.

- (d) Affected by other error of law.
- (e) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (f) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

After a thorough review of the record, it is clear that the district court did not err in affirming the administrative decision. The method by which Smith calculated his release date is not entirely clear; however, it appears that he is taking the balance owed on his sentence at the time of resentencing (which took into account credit for time already spent in custody), applying good time credits to that balance, and then calculating his release date using that remaining balance from his initial date of incarceration in 1977, which would essentially give him credit twice for the time served prior to his resentencing. His arguments are without merit, and the trial court did not err in upholding the agency decision and dismissing his petition for judicial review with prejudice.

#### **DECREE**

The judgment of the trial court dismissing Smith's petition for judicial review with prejudice and assessing costs is affirmed. Costs of this appeal are assessed to plaintiff, Warren Smith.

**AFFIRMED.**