NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 2121

BEAUREGARD J. WATTIGNEY

VERSUS

JAMES LEBLANC, SECRETARY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 576,427, Section 27
Honorable Todd W. Hernandez, Judge Presiding

Beauregard J. Wattigney
Jackson, LA

Plaintiff-Appellant
In Proper Person

Jonathan R. Vining
Baton Rouge, LA

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

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Judgment rendered May 6, 2011

PARRO, J.

Beauregard Wattigney, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment affirming the final agency decision and dismissing his petition for judicial review. We affirm the judgment in accordance with Rule 2-16.1(B) of the Uniform Rules of Louisiana Courts of Appeal.

On March 23, 1999, Wattigney, a former police officer, pled guilty to multiple charges of incestuous sexual contact over a period of years with his two minor daughters.[1] On the two bills of information charging him with these crimes, some of the time periods state that all the offenses were committed prior to 1997; others show the offenses continuing into 1998. He was sentenced according to a plea agreement to twenty years at hard labor on two charges of forcible rape, to be served concurrently with all other sentences. On charges of aggravated incest, he was sentenced to twenty years at hard labor on two counts, to run consecutive to the previous sentences; this sentence was suspended and he was placed on five years active probation, with special conditions. On a charge of aggravated oral sexual battery, he was sentenced to twenty years at hard labor, to run concurrent with the previous sentences. On two counts of oral sexual battery, he was sentenced to fifteen years on each count, to run concurrent with all other sentences, and on two counts of sexual battery, he was sentenced to ten years at hard labor as to each count, to run concurrent with the other sentences.

In October 2008, he filed a request for an administrative remedy procedure (ARP), pursuant to LSA-R.S. 15:1177, *et seq.*, complaining that his "good time" credits were being incorrectly calculated by DPSC, in that some of them were being computed at the rate of 30 days for every 30 days in actual custody, whereas others were being computed at the rate of 3 days for every 17 days in actual custody. He contended that, since all the convictions had occurred on the same day, all should be computed at the "day-for-day" rate that was in effect for crimes committed before 1997. He also claimed that someone had altered the bills of information to write in specific dates

[1] These charges were made under Docket Numbers 98-7344 and 98-7345 of the Twenty-Fourth Judicial District Court in Jefferson Parish.

where only the month and year had been shown. For instance, on two counts alleging aggravated incest with his younger daughter, the dates showed that the crimes were committed from May 1994 to October 1998; the October 1998 date had been changed by inserting a handwritten "31," indicating that the ending of the period was October 31, 1998. There was also a handwritten notation on the bill of information stating, "Use the latest date as the offense date per H. Goines. 6/16/99 B. Acklin." Wattigney contended that the district attorney had agreed that all the offenses actually occurred during the summer of 1993, and his plea agreement was based on that understanding. He requested correction of his record to provide additional good time credit.

His ARP was rejected by DPSC at both steps on the grounds that, for the crimes showing an ending date of commission prior to January 1, 1997, his good time credit was being computed according to "Act 138," which governed crimes committed before January 1, 1997, whereas for the crimes showing an ending date of commission after 1997, his good time credit was being computed according to "Act 1099," which had amended the good time credit statute in 1995, with an effective date of January 1, 1997.[2] After exhausting his administrative remedies, Wattigney filed a petition for judicial review with the Nineteenth Judicial District Court. The case was assigned to a commissioner for handling, who reviewed the record and made a written recommendation to the judge. In that recommendation, the commissioner concluded:

> [I]n this matter the petitioner was convicted for the commission of crimes over periods of time that fell, in part, after the effective date of the change in the law that requires offenders, convicted of crimes of violence, to receive good time at a rate less [than] day for day credit. The petitioner has not demonstrated that he committed the offenses at issue prior to January 1, 1997 and the documentation in the record indicates the petitioner was convicted for the commission of the offenses at issue over a range of time periods that went beyond January 1, 1997. The administrative record does not support the finding that the Department of Correction's administrative decision should be reversed on judicial review.

[2] The computation of "good time" credit is set out in LSA-R.S. 15:571.3, which has been amended numerous times since its enactment. One of those amendments, 1991 La. Acts, No. 138, § 1 (Act 138), effective January 31, 1992, provided that prisoners could earn diminution of sentence, to be known as "good time," at the rate of thirty days of good time for each thirty days served in actual custody. A later amendment, 1995 La. Acts, No. 1099 (Act 1099), effective January 1, 1997, provided that an inmate convicted a first time of a crime of violence could earn diminution of sentence at a rate of three days for every seventeen days in actual custody. The date of the commission of the crime controls the computation of the diminution of sentence. See State ex rel. Bickman v. Dees, 367 So.2d 283, 287 (La. 1978).

After reviewing the record and the commissioner's recommendation, along with Wattigney's traversal, the district court judge affirmed the final agency decision and dismissed Wattigney's petition at his cost.

We have reviewed the entire record and agree with the conclusion reached by DPSC and the district court. Even if we were to assume that someone had modified the bills of information with handwritten, specific dates, the bills of information would still have charged Wattigney with the commission of certain crimes after January 1, 1997. By stating on the bills of information that certain offenses occurred through a period ending May 1998 or October 1998, it is clear that the charges against him included criminal activities after the effective date of Act 1099. Nothing in the record indicates otherwise. Therefore, the computation of his good time credit by DPSC was correct, and we find no error in the judgment affirming the DPSC decision and dismissing his petition. The judgment is affirmed, and all costs of this appeal are assessed against Wattigney.

AFFIRMED.