

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1667

WESLEY DICK, LESLIE GOODWIN, RUDOLPH HAYES, MILTON ISAAC, ELTON JEFFERSON, KENNY MILLS, GAYLE NEIDHART, STERLING BUCKNER, WILLIAM OVERBY, KENNETH DILOSA, MALCOLM PERKINS, DON POOLE, LAKYIA SKINNER, FREDERICK DOMINO DAVIS, DRAPER BEDFORD, CURTIS BAILEY, FRANK FRADELLA, CARLO DE SALVO, DARRON HARRIS, KIM MEYERS, MELVIN ANDERSON, CRAIG PARENT, KENDRICK TURNER, EDMOND SCOTT, EARNEST MICHAEL ALLEN, DWAYNE BAKER, JIMMY BRUMFIELD, FRANK CASTON, SONNY CASTON, TERRENCE FORD, LARRY FORD, LAWRENCE HALL, SR., CLYDE LYNCH, JAMES PENDLETON, JOSEPH RICHARD AND GEORGE WEBER, PRENTICE ROBINSON, FLOYD TYLER, FRANK FRADELLA, JU HYUN CHO, KENNAN TEMPLE, DANIEL MAGEE

VERSUS

GOVERNOR BOBBY JINDAL, GOVERNOR OF THE STATE OF LOUISIANA, LOUISIANA DEPARTMENT OF CORRECTIONS, RICHARD STALDER, SECRETARY OF THE LOUISIANA DEPARTMENT OF CORRECTIONS, LOUISIANA RISK REVIEW PANEL, KAYLA SHERMAN, EXECUTIVE OFFICER OF THE CENTRAL RISK REVIEW PANEL, CYNTHIA BROWN, EXECUTIVE OFFICER OF THE SOUTH RISK REVIEW PANEL, AND WAYNE MILLUS, EXECUTIVE OFFICER OF THE NORTH RISK REVIEW PANEL

Judgment Rendered: March 26, 2010

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 567,386

Honorable Janice Clark, Judge

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Metairie, LA

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Plaintiffs-Appellants
Wesley Dick, et al.

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Defendants-Appellees
State of Louisiana, et al.

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

GUIDRY, J.

On May 28, 2008, Wesley Dick and forty other inmates in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), and housed at various correctional facilities throughout the state, filed a Petition for Mandamus wherein they complained that their applications to the Louisiana Risk Review Panel for commutation of their sentences were either denied or ignored. Pursuant to their petition, plaintiffs sought to compel the governor, the secretary of the DPSC, and the executive officers of the Louisiana Risk Review Panel to review and act on their applications. By a judgment signed February 23, 2009, the trial court, *ex proprio motu*, dismissed the following plaintiffs from the action for failure to state a cause of action for mandamus or any other relief: Frank Fradella, Carlo DeSalvo, Darron Harris, Craig Parent, Kendrick Turner, Edmund Scott, Terrence Ford, Larry Ford, Lawrence Hall, Clyde Lynch, James Pendleton, Joseph Richard, George Weber, Daniel McGee, Ernest Michael Allen, Dwayne Baker, Jimmy Brumfield, Frank Caston, Sonny Caston, Floyd Tyler, Prentice Robinson, and Clifford Wright.

The dismissed plaintiffs¹ appeal, contending that on its face, La. R.S. 15:308 does not exclude them from applying to the Louisiana Risk Review Panel and that La. R.S. 15:308 supercedes La. R.S. 15:574.22.² We find no merit in this contention.

Louisiana Revised Statutes 15:308 provides:

A. (1) The legislature hereby declares that the provisions of Act No. 403 of the 2001 Regular Session of the Legislature provided for more lenient penalty provisions for certain enumerated crimes and that these penalty provisions were to be applied prospectively.

¹ Joseph Richard is not a party to this appeal as he voluntarily sought dismissal from the action.

² Specifically, La. R.S. 15:574.22(G) lists specific offenses for which persons convicted of such crimes "shall not be eligible for review by the Risk Review Panel." Included in the listing are persons convicted of a crime of violence as defined or enumerated in La. R.S. 14:2(B), persons convicted of a sex offense defined in La. R.S. 15:540 et seq. when the victim is under eighteen, persons convicted of certain violations of the Uniform Controlled Dangerous Substances Law, and persons sentenced as a habitual offender under La. R.S. 15:529.1, wherein one or more of the predicate offenses is a crime of violence as defined or enumerated in La. R.S. 14:2.

(2) The legislature hereby further declares that Act No. 45 of the 2002 First Extraordinary Session of the Legislature revised errors in penalty provisions for certain statutes which were amended by Act No. 403 of the 2001 Regular Session of the Legislature and that these revisions were to be applied retroactively to June 15, 2001, and applied to any crime committed subject to such revised penalties on and after such date.

B. In the interest of fairness in sentencing, the legislature hereby further declares that the more lenient penalty provisions provided for in Act No. 403 of the 2001 Regular Session of the Legislature and Act No. 45 of the 2002 First Extraordinary Session of the Legislature shall apply to the class of persons who committed crimes, who were convicted, or who were sentenced according to the following provisions: R.S. 14:56.2(D), 62.1(B) and (C), 69.1(B)(2), 70.1(B), 82(D), 91.7(C), 92.2(B), 92.3(C), 106(G)(2)(a) and (3), 106.1(C)(2), 119(D), 119.1(D), 122.1(D), 123(C)(1) and (2), 352, and 402.1(B), R.S. 15:529.1(A)(1)(b)(ii) and (c)(ii), 1303(B), and 1304(B), R.S. 27:262(C), (D), and (E), 309(C), and 375(C), R.S. 40:966(B), (C)(1), (D), (E), (F) and (G), 967(B)(1), (2), (3), and (4)(a) and (b), and (F)(1), (2), and (3), 979(A), 981, 981.1, 981.2(B) and (C), and 981.3(A)(1) and (E), and Code of Criminal Procedure Art. 893(A) prior to June 15, 2001, provided that such application ameliorates the person's circumstances.

C. Such persons shall be entitled to apply to the Louisiana Risk Review Panel pursuant to R.S. 15:574.22.

Act 45 of the 2002 First Extraordinary Session of the Louisiana Legislature only revised the penalty provisions of certain violations of the Uniform Controlled Dangerous Substances Law under title 40. None of the dismissed plaintiffs' offenses involve violations of the Uniform Controlled Dangerous Substances Law. Act 403 of the 2001 Regular Session of the Louisiana Legislature revised the penalty provisions of several enumerated crimes, but none of the dismissed plaintiffs were convicted of any of the enumerated crimes. Finally, while Act 403 amended the Louisiana Habitual Offender Law, La. R.S. 15:529.1, under which several of the dismissed plaintiffs were sentenced, the amendment of that statute would not ameliorate any of the dismissed plaintiffs' circumstances. See La. R.S. 15:308(B). Hence, the dismissed plaintiffs were not "such persons" to which the provisions of La. R.S. 15:308 applied such that they were entitled to apply to the Louisiana Risk Review Panel. See La. R.S. 15:308(C).

Thus, we affirm the judgment of the trial court and issue this summary disposition in accordance with Uniform Rules - Courts of Appeal, Rule 2-16.2(A)(2) and (6). Costs of this appeal are assessed to the appellants: Frank Fradella, Carlo DeSalvo, Darron Harris, Craig Parent, Kendrick Turner, Edmund Scott, Terrence Ford, Larry Ford, Lawrence Hall, Clyde Lynch, James Pendleton, George Weber, Daniel McGee, Ernest Michael Allen, Dwayne Baker, Jimmy Brumfield, Frank Caston, Sonny Caston, Floyd Tyler, Prentice Robinson, and Clifford Wright.

AFFIRMED.