

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 0671

WILFRED GREENUP

VERSUS

LOUISIANA PAROLE BOARD

Judgment Rendered: March 23, 2012

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 585,751**

Honorable Todd Hernandez, Judge Presiding

**Wilfred Greenup
St. Gabriel, LA**

Plaintiff/Appellant, pro se

**Patricia H. Wilton
Douglas G. Swenson
Baton Rouge, LA**

**Counsel for Defendant/Appellee,
Louisiana Parole Board**

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

WHIPPLE, J.

In this case, a prisoner is appealing the district court's judgment dismissing his suit for review of a decision of the Parole Board as untimely. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Wilfred Greenup, the petitioner herein, is a prisoner in the custody of the Louisiana Department of Public Safety and Corrections. On February 15, 2005, Greenup was released "as if on parole" based on diminution of sentence, in accordance with the provisions of LSA-R.S. 15:571.5. Greenup's parole was later revoked on March 6, 2008, on the basis that Greenup had absconded from supervision in January 2007.

Thereafter, by petition dated November 30, 2009, and file stamped by the district court on December 21, 2009, Greenup sought judicial review of the Louisiana Parole Board's decision to revoke his parole, contending in part that he had not been afforded a preliminary hearing. Given the length of time that had passed since the Parole Board's decision, the Commissioner then ordered Greenup to show cause in writing as to why his petition should not be dismissed based on his failure to timely appeal the Parole Board decision within ninety days. After receiving Greenup's response to the show cause order, the Commissioner ordered Greenup's petition be served on the Parole Board and ordered the Parole Board to file into the suit record a certified copy of the official record of the parole revocation hearing.

After receiving and reviewing the revocation record regarding Greenup, the Commissioner issued his recommendation that Greenup's petition for review be dismissed with prejudice as untimely. By judgment dated January 11, 2011, the district court, in accordance with the

Commissioner's recommendation, dismissed Greenup's petition with prejudice. From this judgment, Greenup appeals.

DISCUSSION

In his recommendation, the Commissioner stated as follows:

The defendants contended the petitioner failed to timely appeal his revocation decision within the 90[-]day preemptive time period provided by R.S. 15:574.11. The record indicates the petitioner's final revocation hearing was conducted on March 6, 2008. His petition for review was dated on November 30, 2009 and was stamp filed by the Clerk of Court on December 21, 2009. The petitioner was ordered by this Commissioner to explain the delay in filing this request for review of his parole revocation decision and the petitioner submitted a brief that is contained in the record for this Court's review. The petitioner contends that he did not learn of the requirements of R.S. 15:574.11 until advised by inmate counsel on November 19, 2009. The petitioner contends the inmate counsel was informed of the provisions of R.S. 15:574.11 during an inmate counsel training seminar conducted, in part, by this Commissioner at Dixon Correctional Center.

This Commissioner notes that the 90[-]day preemptive time period for filing requests for review of final parole revocation decisions was set in place in 2005 under Act 460 of 2005 and was in place well before the petitioner's 2008 revocation hearing. While the petitioner might not have been aware of the change in the law provided by Act 490 of 2005 at the time of his final parole revocation, the provisions of the change in the law must be applied to all parties as of the time the law came into effect. The 90[-]day time period set out in R.S. 15:574.11 is a preemptive period, which may not be interrupted or suspended. Unfortunately for the petitioner, the provisions of R.S. 15:574.11 also require that any request for review of a final revocation decision filed after the expiration of the time period provided by the Legislature to exercise the right to seek review should be dismissed with prejudice. The record filed in this matter supports the finding that the petitioner failed to timely seek review.

After review of the record, we find no error in the district court's judgment herein. Louisiana Revised Statute 15:574.11(D) provides that petitions for review of a revocation decision "shall be subject to a preemptive period of ninety days after the date of revocation by the Board of Parole" and that "[p]etitions for review filed after this preemptive period shall be dismissed with prejudice." Greenup's petition was filed more than

one year after the revocation of his parole and, thus, is clearly preempted pursuant to LSA-R.S. 15:574.11(D). Accordingly, dismissal with prejudice was appropriate. See McKendall v. Louisiana Parole Board, 2010 CA 0967 (La. App. 1st Cir. 2/11/11)(unpublished).¹

CONCLUSION

For the above and foregoing reasons, the January 11, 2011 judgment of the district court, dismissing Greenup's petition with prejudice, is affirmed. Costs of this appeal are assessed against appellant, Wilfred Greenup.

AFFIRMED.

¹Pursuant to LSA-C.C.P. art. 2168, unpublished opinions of the courts of appeal posted by such courts to their websites may be cited as authority.