

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 2363

KEVIN BROWN

VERSUS

RICHARD STALDER, BURL CAIN, SHIRLEY COODY

Judgment Rendered: November 3, 2006

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Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Trial Court Number 528,612

Honorable William A. Morvant, Judge

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Kevin Brown  
Angola, LA

In Proper Person  
Plaintiff – Appellant  
Kevin Brown

L. Bruce Dodd  
Baton Rouge, LA

Attorney for  
Defendants – Appellees  
Richard Stalder, et al.

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

WELCH, J.

The plaintiff/appellant, Kevin Brown, is an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the Department”) confined to the Louisiana State Penitentiary in Angola, Louisiana. He appeals the judgment of the district court dismissing his petition for judicial review of administrative remedy procedure number LSP-2003-1301. For the foregoing reasons, we affirm.

The plaintiff alleged that prison officials lost a hooded sweatshirt, a pair of sweatpants, a pair of thermal underwear, and the left shoe of a pair of Nike Air tennis shoes that his family had purchased and sent to him. The Department acknowledged that the package was received and recorded in the logbook of the prison, and then sent to his camp; however, the Department was unable to verify that the plaintiff had actually received the property, and therefore, it granted his claim for lost property. In accordance with Department regulations, it offered the plaintiff two State issue sweatshirts and two pairs of State issue sweatpants as reimbursement for his lost property. The final decision of the Department granting Kevin Brown reimbursement in this manner was issued on November 18, 2004, and received by Kevin Brown on November 29, 2004.

Dissatisfied with the reimbursement offered by the Department, the plaintiff filed a petition for judicial review on January 24, 2005.<sup>1</sup> On May 23, 2005, the commissioner issued a report finding that the plaintiff’s petition was not filed within thirty days of the receipt of notice of the final decision by the Department as mandated by La. R.S. 15:1177(A). Therefore, the commissioner recommended

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<sup>1</sup> Although the plaintiff’s petition for judicial review was not actually filed by the Clerk of Court until January 24, 2005, the commissioner noted in her report that the envelope ostensibly used to mail the petition had a postage stamp date of January 14, 2005. A petition for judicial review by an incarcerated inmate unable to personally file the petition is considered timely filed if placed within the hands of the prison mail officials for forwarding to the district court within the thirty-day period mandated by La. R.S. 15:1177(A). **Tatum v. Lynn**, 93-1559 (La. App. 1<sup>st</sup> Cir. 5/20/94), 637 So.2d 796, 799.

that the plaintiff's suit be dismissed with prejudice for lack of subject matter jurisdiction and for failure to state a cause of action. After considering the entire record of the proceedings, the district court adopted the commissioner's recommendation, and rendered judgment dismissing the plaintiff's suit with prejudice.

The plaintiff appealed this judgment of the district court, asserting that he did not timely appeal the Department's decision because he was placed in administrative lockdown (Camp C) on October 14, 2004, for a rule infraction, and as a result, all of his belongings, including the final decision of the Department, were placed in storage. Thus, he contends that he was prevented from timely appealing the matter.

Louisiana Revised Statutes 15:1177(A) provides, in pertinent part: "Any offender who is aggrieved by an adverse decision, excluding decisions relative to delictual actions for injury or damages, by the Department ... may, within thirty days after receipt of the decision, seek judicial review of the decision ...." The period set forth in La. R.S. 15:1177(A) is preemptive rather than prescriptive. **Carter v. Lynn**, 93-1583 (La. App. 1<sup>st</sup> Cir. 5/20/94), 637 So.2d 690, 691. The plaintiff had to seek judicial review by filing his petition in the district court within thirty days after receipt of the notice of the final decision by the department. The record before us indicates that he did not do so. The final agency decision was received by the plaintiff on November 29, 2004. The plaintiff did not file his petition for judicial review in the district court until January 24, 2005 (with a postage stamp date of January 14, 2005), both well over the thirty-day time period allowed for judicial review of the decision. Therefore, the plaintiff's petition was preempted, and the district court properly dismissed the plaintiff's petition.

Moreover, we note the record reflects that Kevin Brown signed the receipt for the final decision of the Department on November 29, 2004, a month and a half

after he was allegedly placed in administrative lockdown in Camp C and his belongings containing the final decision of the Department allegedly placed in storage. Additionally, the record also reflects that the plaintiff received the final decision of the Department while housed at Camp Jaguar, his current address within the penitentiary, as opposed to the administrative lockdown in Camp C. Accordingly, we find no merit to the plaintiff's contention that he was prevented from timely appealing this matter.

After a thorough review of the entire record of these proceedings, we find no error in the judgment of the district court and affirm the June 13, 2005 judgment of the district court in accordance with Uniform Court of Appeal Rules 2-16.2(A)(2), (5), (6), and (8). All costs of this appeal are assessed to the plaintiff/appellant, Kevin Brown.

**AFFIRMED.**