

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1231

CLARENCE SAMUELS

VERSUS

**FERNANDO GRYDER, MAJOR STEPHENSON, MAJOR  
ROGERS, LT. PARANUK, AND LT. BENSON**

Judgment Rendered: SEP 01 2006

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On Appeal from the 19<sup>th</sup> Judicial District Court  
In and for the Parish of East Baton Rouge, State of Louisiana  
Docket No. 521,583, Division " F "

Honorable Timothy E. Kelley, Judge Presiding

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Clarence Samuels  
Homer, LA

Plaintiff/Appellant  
In Proper Person

David A. Young  
Assistant Attorney General  
Baton Rouge, LA

Counsel for Defendants/Appellees  
Major Rogers, Major Stephenson,  
Capt. Paranuk, Lt. Benson, and  
Sgt. Gryder

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**BEFORE: PARRO, McDONALD, AND HUGHES, JJ.**

*McDonald, J. concurs.*

**HUGHES, J.**

This is an appeal from a judgment of the Nineteenth Judicial District Court dismissing an inmate's suit for judicial review. For the following reasons, we reverse and remand.

**FACTS AND PROCEDURAL HISTORY**

Clarence Samuels, an inmate in the custody of the Department of Public Safety and Corrections (DPSC) at David Wade Corrections Center (DWCC), instituted a complaint in the prison's Administrative Remedy Procedure (ARP), complaining of unsanitary conditions in which he was forced to live. Specifically, Samuels explained that as a member of the field crew, he is required to walk behind and work among horse-mounted guards, which results in horse manure getting on and clinging to his shoes, hands, and tools, and he is not provided with the opportunity or the facilities to properly clean before returning to his living quarters. As a result, fecal matter is tracked into his living quarters thereby creating unsanitary living conditions. He claimed that the forced exposure to these conditions constitutes cruel and unusual punishment, in violation of his Eighth Amendment rights.

Petitioner's ARP request was denied at both steps of the procedure.

The first step response sheet contained the following denial:

In response to your ARP, an investigation was conducted. The following is my findings. I can find no evidence to support your accusations. You have not produced tangible evidence of a[n] unsanitary environment. I find your complaint to be without merit. I plan no further intervention at this level.

In the second step response, DPSC concurred with the staff's decision, which, it recited, was "clear and concise" and "thoroughly addressed" the issues.

Samuels then instituted a petition for judicial review asserting the same factual claim that had been denied in the ARP.<sup>1</sup> He named as defendants four field supervisors, citing their “failure to act” on his request for adequate cleaning facilities as the reason for his continued exposure to unsanitary living conditions and thereby the deprivation of his right to be free from cruel and unusual punishment. Pursuant to its screening, in accordance with LSA-R.S. 15:1178 and 1184, the district court found that the claim was subject to judicial review under the provisions of the Corrections Administrative Remedy Procedure (CARP), ordered that the suit be served on Richard Stalder, as Secretary of DPSC, and further ordered that DPSC transmit the administrative record in the matter.<sup>2</sup>

The commissioner reviewed the administrative record and recommended affirming DPSC’s decision and dismissing petitioner’s suit with prejudice. On March 2, 2005, the district court rendered judgment consistent with the commissioner’s recommendation. Samuels filed this appeal. While his brief does not designate any clear assignment of error, he appears to assert that the district court should have reversed the administrative decision because the decision violated his constitutional rights.

### **LAW AND ANALYSIS**

Louisiana Revised Statute 15:1177 provides for judicial review of an adverse decision by the DPSC. On review of the agency’s decision, the district court functions as an appellate court. Its review shall be confined to the record and shall be limited to the issues presented in the petition for

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<sup>1</sup> If an inmate is not satisfied with the second step response, he may file suit in district court. LAC 22:I.325(G)(2)(b).

<sup>2</sup> DPSC was not named as a defendant in the petition. Pursuant to the court’s order, however, DPSC transmitted the record to the district court for review. A brief was filed on behalf of the four individual defendants by a state assistant attorney general. The court subsequently issued a judgment dismissing petitioner’s claim for monetary damages as filed in an improper venue and maintained the suit as an appeal only of the administration decision.

review and the administrative remedy request filed at the agency level. LSA-R.S. 15:1177(A)(5). The court may affirm the decision of the agency or remand the case for further proceedings, or order that additional evidence be taken. LSA-R.S. 15:1177(A)(8). The court may reverse or modify the administrative decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are (1) in violation of constitutional or statutory provisions, (2) in excess of the statutory authority of the agency, (3) made upon unlawful procedure, (4) affected by other error of law, (5) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, or (6) manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. LSA- R.S. 15:1177(A)(9).

On review of the district court's judgment in a suit for judicial review under LSA-R.S. 15:1177, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. **McCoy v. Stalder**, 99-1747 (La.App. 1 Cir. 9/22/00), 770 So.2d 447, 450-451.

The Eighth Amendment's proscription against cruel and unusual punishment embodies concepts of dignity, civilized standards, humanity, and decency, to protect the prisoner from not only physically barbarous punishments that involve the unnecessary and wanton infliction of pain, but also from penal measures which are incompatible with "the evolving standards of decency that mark the progress of a maturing society." See **Estelle v. Gamble**, 429 U.S. 97, 102-103, 97 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976). Those standards of decency require the state to furnish its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care,

and personal safety. **Williams v. Kelone**, 560 So.2d 915, 916 (La.App. 1 Cir.), writ denied, 567 So.2d 107 (La. 1990).

Although the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment, not all complaints regarding conditions of confinement amount to a constitutional violation. To state a claim under the Eighth Amendment, a petitioner must allege facts sufficient to establish that the prison officials have, with “deliberate indifference,” exposed him to a condition of confinement that is sure or very likely to cause serious illness. **Helling v. McKinney**, 509 U.S. 25, 33-36, 113 S.Ct. 2475, 2480-82, 125 L.Ed.2d 22 (1993). To prevail on a deliberate indifference claim, the petitioner must establish that the prison conditions to which he is involuntarily exposed unreasonably endanger his future health and that to be so exposed against his will is contrary to current standards of decency for anyone. **Helling**, 509 U.S. at 35-36. This involves a tort-like inquiry into the seriousness of the potential harm and the likelihood of such injury, as well as the gravity of risk measured by society’s standards. The petitioner must also prove that prison officials are deliberately indifferent to plaintiff’s plight. **Id.** at 32. This is a subjective element and involves an inquiry into the prison officials’ state of mind, to be determined in light of the prison authorities’ current attitudes and conduct as well as considerations of arguments regarding the realities of prison administration. **Id.** at 32, 36-37.

In her report, which was adopted by the district court as reasons for judgment, the commissioner noted that petitioner’s evidence in support of his claims consisted of his bare allegations in his ARP request and the attestations of truthfulness of those allegations made by six other inmates. The commissioner concluded that this evidence was not sufficient for

Samuels to meet his burden of proof in this Eighth Amendment claim. The commissioner further noted the complete lack of evidence as to the condition of the living quarters. Regarding the circumstances that led to the contact with the horse manure, the commissioner quoted the statement of a shift supervisor, submitted as part of the administrative investigation, wherein the supervisor explained the necessity of horse-mounted guards and expressed his opinion that the inmates could easily avoid contact with the horse manure on the ground by merely paying attention. The commissioner concluded that DPSC's decision appears reasonable based on a lack of evidence to show that the petitioner is living in a "squalid, inhumane, or dangerously unsanitary environment or even that he is unable to avoid tracking in horse manure to his living quarters, if that is happening." Based on this conclusion, the district court affirmed DPSC's decision as neither arbitrary, capricious, nor manifestly erroneous.

We disagree, and find that the "dearth of evidence in the record as a whole," to which the commissioner repeatedly referred, indicates that the denial of relief was in fact arbitrary and capricious. A conclusion is "capricious" when the conclusion has no substantial evidence to support it, or is contrary to substantiated competent evidence; the word "arbitrary" implies a disregard of evidence or of the proper weight thereof. **Sterling v. Department of Public Safety & Corrections, Louisiana State Penitentiary**, 97-1960, 97-1961 (La.App. 1 Cir. 9/25/98), 723 So.2d 448, 455.

It appears from the ARP responses and the record as a whole that Samuels' allegation that he is living in unsanitary conditions due to the presence of horse manure was determined to be meritless, without any investigation into the condition of the living quarters, and significantly,

without any assertion to the contrary. The only evidence produced by the investigation was a letter written by a shift supervisor, in which he explains the necessity of horse-mounted guards and expresses his opinion that the inmates can easily avoid contact with the horse manure on the ground by merely paying attention. His conclusion that Samuels' claims are "not true" references his finding that inmates "can easily avoid" the manure. He asserts no factual findings regarding the availability of wash facilities or the condition of the living quarters. Likewise, the ARP responses assert no factual findings regarding the availability of wash facilities or the condition of the living quarters. The responses did not address the alleged lack of wash facilities. And as to the alleged unsanitary conditions, the response notes only that Samuels failed to produce "tangible evidence," apparently placing a burden of production of the *poop* on Samuels.

We note that the ARP procedure instructs an inmate to assert a grievance in a letter of request to the warden, presenting as many facts as possible to answer all questions concerning the incident. The letter should be as brief as possible, and may be rejected and returned for clarification or summarization on one additional page if the request is unclear or if the volume of attached material is too great. LAC 22: I.325(A)(4). The warden or his assignee is charged with conducting fact-finding and/or information-gathering prior to rendering a response. LAC 22: I.325(G)(1). The inmate is instructed to cooperate with the investigation. An inmate is not guaranteed to receive the remedy sought, or any remedy at all, but is assured that any request will be handled, investigated, and responded to as the warden deems necessary and that written answers will be provided that explain the information gathered or the reason for the decision reached.

LAC 22: I.325(E)(3), I.325(F)(2)(c). “Through this procedure, inmates shall receive reasonable responses.” LAC 22: I.325(B).

The purpose of the ARP procedure is to possibly avoid the necessity of a lawsuit by bringing about an amicable resolution to a complaint, through an internal investigation of that complaint. The heart of Samuels’ complaint was that he was living in the presence of horse manure, which could be prevented if he were provided access to a wash facility when the manure gets on his boots. Neither of these aspects of the complaint was investigated, no factual findings were made, and thus the dismissal of his claims as “without merit” was arbitrary and capricious.

Accordingly, we find that the district court erred in failing to remand the case for further proceedings or to order that additional evidence be taken. See LSA-R.S.15:1177(A)(8). Because the administrative remedy procedures were not complied with in this case, and in light of the possible Eighth Amendment violations at issue, we find that additional evidence must be taken for a more thorough exercise of the administrative review procedure. If Samuels is not satisfied by the response he receives he may again seek judicial review.

### **CONCLUSION**

The judgment of the district court affirming the DPSC’s decision and dismissing petitioner’s suit with prejudice is reversed. This matter is remanded to the district court with instructions to either remand the case for further proceedings or order that additional evidence be taken in accordance with LSA-15:1177(A)(8).

**REVERSED AND REMANDED WITH INSTRUCTIONS.**