

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1907

JOHN POUILLARD

VERSUS

**RICHARD L. STALDER,
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. 522,452, Division "O (8)"
Honorable Wilson Fields, Judge Presiding**

**John Poullard
Homer, LA**

**Plaintiff-Appellant
In Proper Person**

**Susan Wall Griffin
Baton Rouge, LA**

**Attorney for
Defendant-Appellee
Richard L. Stalder, Secretary of the
Department of Public Safety
and Corrections**

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Judgment rendered September 20, 2006

PARRO, J.

An inmate in the custody of the Department of Public Safety and Corrections (DPSC) appeals a judgment of the district court that dismissed his petition for judicial review of a disciplinary matter after he had exhausted his administrative remedies. The issue raised in this appeal is whether the forfeiture of good time under LSA-R.S. 15:571.4 is governed by the law and disciplinary rules in effect at the time of the inmate's commission of the underlying criminal offense or at the time of the inmate's commission of a violation of a disciplinary rule while incarcerated. For the following reasons, the judgment is affirmed.

In his petition for judicial review of a disciplinary matter, John Poullard (Poullard) alleged that he was disciplined on May 29, 2004, for a rule infraction that occurred on April 27, 2004, and was ordered to forfeit 120 days of good time. He appealed this disciplinary matter within the institution, using the administrative remedy procedure, and was denied relief at all steps of the process. On July 19, 2004, Poullard filed a petition for judicial review in the district court, alleging that the forfeiture of 120 days of good time was excessive in that it exceeded the maximum period authorized by LSA-R.S. 15:571.4 as it existed at the time of his 1986 criminal offense. He urged that the application of LSA-R.S. 15:571.4, as amended by 1995 La. Acts, No. 980, §1, was unconstitutional in that it constituted an ex post facto application of the law.

In ruling on this matter, the commissioner noted that a disciplinary rule violation is subject to the disciplinary penalties in effect at the time of the rule violation and that the forfeiture of good time in a disciplinary proceeding neither alters the full term date of the inmate's sentence nor constitutes a form of increased punishment. Accordingly, the commissioner found that Poullard failed to show that the loss of 120 days of good time constituted an ex post facto application of the law. Thus, the commissioner recommended that DPSC's final disciplinary decision be affirmed and Poullard's petition for judicial review be dismissed, with prejudice, at his cost.

Poullard filed a traversal of the commissioner's recommendation, urging that the operative factor in determining whether a law falls within the ambit of the ex post facto

constitutional prohibition is whether the change in a law subsequent to the commission of an offense alters the definition of criminal conduct or increases the penalty by which the crime is punishable. See State ex rel. Olivieri v. State, 00-0172, 00-1767 (La. 2/21/01), 779 So.2d 735, 744, cert. denied, sub nom. Olivieri v. Louisiana, 535 U.S. 936, 121 S.Ct. 2566, 150 L.Ed.2d 730 (2001), and sub nom. Hutchinson v. Louisiana, 534 U.S. 892, 122 S.Ct. 208, 151 L.Ed.2d 148 (2001). Based on this urging, he argued that the application of the current statute and rules in his disciplinary matter resulted in an increased punishment--"more time of hard labor punishment."

After reviewing the evidence and the commissioner's recommendations, the district court signed a judgment dismissing Poullard's petition, with prejudice, at his cost. This appeal followed.¹ Poullard's appeal is premised on the argument that the statutory provisions in effect at the time that he committed the underlying criminal offense for which he was imprisoned governs the determination of his forfeiture of good time credits earned. For the following reasons, we find that his argument lacks merit.

The forfeiture provisions in effect at the time of the forfeiting conduct govern the computation of the forfeiture of good time. Cao v. Stalder, 04-0650 (La. App. 1st Cir. 5/6/05), 915 So.2d 851, 854, citing Vincent v. State Through Dept. of Corrections, 468 So.2d 1329, 1332 n.2 (La. App. 1st Cir.), writ denied, 472 So.2d 34 (La. 1985). At the time of Poullard's disciplinary offense, LSA-R.S. 15:571.4 stated:

A. Determination shall be made by the secretary on a monthly basis as to whether good time has been earned by inmates in the department's custody. Good time which has been earned by inmates in the custody of the Department of Public Safety and Corrections, hereinafter referred to as the "department", shall not be forfeited except as provided in Subsection C of this Section.

B. (1) An inmate who is sentenced to the custody of the [department] and who commits a simple or aggravated escape from any correctional facility or from the lawful custody of any law enforcement officer or officer of the department, may forfeit all good time earned on that portion of his sentence served prior to his escape.²

¹ See LSA-R.S. 15:1177 regarding judicial review of a final decision by the DPSC.

² This subparagraph was amended by 2004 La. Acts, No. 43, § 1, to include escape from a work-release facility or program, in response to this court's decision in Chamblee v. Stalder, 03-0061 (La. App. 1st Cir. 11/7/03), 868 So.2d 88, 90.

(2) An inmate who has been returned to the custody of the department because of a violation of the terms of parole granted by the Board of Parole shall forfeit all good time earned on that portion of the sentence served prior to the granting of parole.

(3) An inmate who is sentenced to the custody of the department and who commits a battery on an employee of the [department] or any police officer as defined in R.S. 14:34.2 may forfeit good time earned on that portion of the sentence served prior to committing the battery of such person, up to a maximum of one hundred eighty days.

(4) In all other cases, forfeiture of good time may include up to a maximum of one hundred eighty days.

C. The department shall adopt rules to govern the imposition of the forfeiture of good time for the causes enumerated in Subsection B of this Section. The rules shall be adopted in accordance with the Administrative Procedure Act. The rules shall provide that an inmate has the right to a hearing on any charges which are punishable by the forfeiture of good time and that the inmate may waive that right. The rules shall be consistent with and shall implement the provisions of the constitutional, statutory, and jurisprudential requirements which govern the forfeiture of good time. [Footnote omitted.]

Defiance is a "Schedule B" offense under the DPSC's rules governing disciplinary matters. See LAC 22:I.365(D). After a finding of guilt for a "Schedule B" offense, the DPSC may impose, among other penalties, "forfeiture of good time--up to a maximum of 180 days for each violation." LAC 22:I.359(A)(2)(f); see LSA-R.S.15:571.4(B)(4).

These statutory and disciplinary provisions do not violate constitutional ex post facto prohibitions because at the time of commission of the forfeiting conduct, Poullard was deemed to be on notice, by the wording of the statute and rules, that should he commit an act of defiance as set forth in LAC 22:I.365(D), he would be subject to one or two of the penalties listed in LAC 22:I.359(A)(2). Cf. Payton v. Cooper, 05-0127 (La. App. 1st Cir. 2/10/06), 928 So.2d 605, 607-08; Varner v. Day, 00-2104 (La. App. 1st Cir. 12/28/01) 806 So.2d 121, 123-25. Because Poullard's 2004 forfeiting conduct came after the 1995 amendment to LSA-R.S. 15:571.4 and the 2001 and 2002 amendments of DPSC's rules governing disciplinary matters, we conclude that he had sufficient notice that the penalty for committing an act of defiance as set forth in LAC 22:I.365(D) could result in his losing up to 180 days of earned good time. Cf. Washington v. Louisiana State Penitentiary, 98-1310 (La. App. 1st Cir. 6/25/99), 740 So.2d 761, 763-64; Rivera v. State, 98-0507 (La. App. 1st Cir. 12/28/98), 727 So.2d

609, 612-13, writ denied, 99-0289 (La. 3/26/99), 740 So.2d 617. Furthermore, we find no merit in Poullard's contention that the application of these provisions resulted in an increase in the penalty to which he was sentenced.

For the foregoing reasons, the judgment of the district court is affirmed. Costs of this appeal are assessed to John Poullard.

AFFIRMED.