

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 1909

GREGORY DAMM

VERSUS

**SGT. BORDELON, LT. MAYEAUX, COL. ANDERSON, MAJOR
HAYES, MAJOR CONERS, CAPT. JACKSON, WARDEN COOPER,
SGT. JUNEAU, SGT. SMITH, SGT. TIGNER, LT. DAUZAT**

Judgment Rendered: SEP 15 2006

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 508,865**

Honorable Curtis A. Calloway, Judge Presiding

**Gregory Damm
Cottonport, LA**

Plaintiff/Appellant, pro se

**Rose Polito Wooden
Baton Rouge, LA**

**Attorney for Defendants/Appellees,
Richard Stalder, Timothy Seals &
Louisiana Department of Public Safety
& Corrections**

BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

This is an appeal by plaintiff, Gregory Damm, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the DPSC), from a judgment of the district court, dismissing his petition for judicial review of a grievance he filed with the DPSC pursuant to the Corrections Administrative Remedy Procedure (CARP), LSA-R.S. 15:1171, et seq. In his grievance, plaintiff contended that on June 4, 2003, five corrections officers beat, punched and kicked him in a storage room at Avoyelles Correctional Center (AVC). Plaintiff sought relief in the form of a protective order against all AVC officers and a transfer to another facility.

Plaintiff's request for an administrative remedy was denied in both steps at the administrative level. In the second-step response, the DPSC stated that plaintiff's allegations against the officers were unfounded, noting that these allegations could not be substantiated through the information gathered during the investigation.

Plaintiff instituted a petition for judicial review in the district court below.¹ In his report, the Commissioner recommended that the agency decision be affirmed and that plaintiff's request for judicial review be dismissed with prejudice. By judgment dated December 9, 2004, the district court dismissed plaintiff's claims in accordance with the Commissioner's recommendation, and plaintiff filed the instant appeal.

¹As noted by the Commissioner below, there was some discrepancy as to which administrative proceeding was being appealed by plaintiff in this suit. In his petition, plaintiff referenced AVC-2002-439, a disciplinary matter stemming from a purported incident on December 10, 2002, during which plaintiff alleges he was also beaten by AVC officers. However, plaintiff had sought review of multiple claims in the district court in at least two different district court suit numbers. At some point in the proceedings below, this matter was deemed an appeal of AVC-2003-458, which concerned the alleged beating of plaintiff by AVC officers on June 4, 2003. Although plaintiff contends on appeal that both AVC-2002-439 and AVC-2003-458 are before this court on appeal, our review is limited to a review of the ARP addressed by the Commissioner and upheld by the district court, which is AVC-2003-458.

While plaintiff raises numerous “issues” in his brief to this court, the only argument relevant to the judgment on appeal is plaintiff’s contention that the district court erred in dismissing his claim for judicial review arising from his claim that the AVC cellblock officers used excessive force against him, thereby violating his Eighth Amendment right to be free from cruel and unusual punishment.

Louisiana Revised Statute 15:1177(A)(9) sets forth the appropriate standard of judicial review by the district court, which functions as an appellate court when reviewing the DPSC’s administrative decision through CARP. Specifically, the court may reverse or modify the administrative decision only if substantial rights of the appellant have been prejudiced because the administrative decision or findings 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, capricious or characterized by abuse of discretion, or (6) manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. LSA-R.S. 1177(A)(9); Lightfoot v. Stalder, 2000-1120, p. 6 (La. App. 1st Cir. 6/22/01), 808 So. 2d 710, 715-716, writ denied, 2001-2295 (La. 8/30/02), 823 So. 2d 957. 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, p. 6 (La. App. 1st Cir. 9/22/00), 770 So. 2d 447, 450-451.

In its prohibition against “cruel and unusual punishments,” the Eighth Amendment of the United States Constitution places restraints on prison

officials against the use of excessive force. Farmer v. Brennan, 511 U.S. 825, 832, 114 S. Ct. 1970, 1976, 128 L. Ed. 2d 811 (1994). Use of excessive physical force may constitute cruel and unusual punishment even when the inmate does not suffer serious injury. Hudson v. McMillian, 503 U.S. 1, 4, 112 S. Ct. 995, 997, 117 L. Ed. 2d 156 (1992). Whenever prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is whether the force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. Hudson, 503 U.S. at 6-7, 112 S. Ct. at 999.

Based upon our review of the administrative record and pursuant to LSA-R.S. 15:1177(A)(9), we find no error in the district court's judgment or its conclusion that the DPSC's decision was neither arbitrary, capricious, manifestly erroneous or in violation of plaintiff's constitutional or statutory rights and, thus, dismissing plaintiff's suit. In his request for an ARP, plaintiff contended that at approximately 4:30 p.m. on June 4, 2003, five corrections officers beat, punched and kicked him in a storage room at AVC.² In the Commissioner's Recommendation, the Commissioner noted that the administrative record contained written statements from the five corrections officers wherein all five officers denied that plaintiff was physically assaulted on June 4, 2003, as plaintiff alleged. Moreover, as noted by the Commissioner, the record is devoid of any evidence (other than plaintiff's allegations, which were obviously determined by the DPSC to be

² We note that the record demonstrates that on the date of the alleged attack, June 4, 2003, plaintiff was written up for a disciplinary violation that allegedly occurred at 3:25 p.m. when plaintiff threw his and his cell mate's supper trays into the hall and was "racking down" on the cell bars and "hollering." However, plaintiff did not contend in his request for an ARP that the alleged physical assault occurred in conjunction with or was related to that disciplinary incident.

incredible) to substantiate his claim that any physical assault occurred.

After a thorough review of the record herein, we find no error of law or fact and no violation of plaintiff's constitutional rights in the administrative decision of the DPSC, nor do we find that the DPSC was arbitrary or capricious in denying plaintiff the requested relief. See LSA-R.S. 15:1177(A)(9)(a), (d), (e) & (f). Thus, in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B), the judgment is affirmed. Costs of this appeal are assessed against plaintiff, Gregory Damm.

AFFIRMED.