

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 2120

CARLTON MONTA

VERSUS

**MS. PRISCILLA PITRE, DOC RECORDS
ANALYST/COMPUTATION, ALLEN CORRECTIONAL CENTER;
MR. O.K. ANDREWS, WARDEN; LINDA RAMSAY, SECRETARY'S
- DESIGNEE**

Judgment Rendered: September 20, 2006

On Appeal from the Nineteenth Judicial District Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No. 511,995

Honorable R. Michael Caldwell, Judge Presiding

Carlton Monta
Allen Correctional Center
Kinder, LA

Plaintiff/Appellant in Proper Person

William L. Kline
Baton Rouge, LA

Counsel for Defendant/Appellee
Richard Stalder, Secretary, Louisiana
Department of Public Safety and
Corrections

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

McCLENDON, J.

Plaintiff, Carlton Monta, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department), filed a petition for judicial review asserting that the Department's decision to deny him incentive wages is legally invalid and in violation of his rights. The district court determined that the Department's decision was neither arbitrary, capricious, or manifestly erroneous, nor in violation of any of plaintiff's constitutional or statutory rights. Plaintiff appeals the judgment of the district court affirming the Department's decision and dismissing his petition without prejudice.

Plaintiff alleges that he is entitled to receive incentive wages although he opted to be eligible to receive increased good time in lieu of incentive wages. Plaintiff concedes that when he signed the good-time option form, the option agreement provided that it could not be revoked during the sentence or term for which he was incarcerated. Nonetheless, plaintiff asserts that the Department should allow him to revoke the option and receive incentive wages dating back to the date he signed the option form in 1999.

After a thorough review of the entire record herein, we find no error in the judgment of the district court and affirm its judgment in accordance with Uniform Court of Appeal Rules 2-16.2A(4-8). Moreover, we find the May 4, 2005 commissioner's report, adopted by the district court in its June 2, 2005 judgment, adequately explains, discusses and resolves the issues raised by plaintiff, and therefore, we adopt those written reasons and incorporate them into this opinion as Appendix A.

All costs of this appeal are assessed to plaintiff, Carlton Monta.

AFFIRMED.

"Appendix A"

CARLTON MONTA

VERSUS

PRISCILLA PITRE, ET AL

NUMBER: 511,995 SECTION 24

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COMMISSIONER'S REPORT

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The petitioner, an inmate in the custody of the Department of Public Safety and Corrections filed the appeal of Administrative Remedy Procedure Number ALC-03-575, seeking review in accordance with R. S. 15; 1171 et seq. The Department filed the administrative record, which has been marked for identification as Exh. A in globo in the suit record. Both parties were notified of their right to file briefs and any briefs received have been considered and are in the record of the Court's consideration. This report is issued on the record alone, in accordance with law for the Court's de novo review of the record and the adjudication of the Petitioner's claim.

ANALYSIS OF THE FACTS AND THE LAW

The scope of this Court's review is limited by R.S. 15:1177(A)(5)&(9), which states, in pertinent part, as follows:

"(5) The review shall be conducted by the Court without a jury and shall be confined to the record. The review shall be limited to the issues presented in the petition for review and the administrative remedy request filed at the agency level.

* * * * *

(9) The court may reverse or modify the decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the Agency;
- c. Made upon unlawful procedure;
- d. Affected by other error of law;
- e. Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion; or
- f. Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record." (Emphasis added).

Section 571.3 Diminution of sentence for good behavior

B. Every inmate in the custody of the department who has been

convicted of a felony ... may earn, **in lieu of incentive wages**, a diminution of sentence by good behavior and performance...to be known as "good time."¹

In this case, the Petitioner asserts that the Department's decision to deny him incentive wages, even though he opted to be eligible to receive increased good time in lieu of incentive wages, is legally invalid and in violation of his rights. Based on the administrative record, the petitioner is entitled to no further relief as the Department's decision to deny incentive wages is neither arbitrary, manifestly erroneous or in violation of the Petitioner's rights for reasons stated hereinafter.

The facts that are not in dispute are that the Petitioner signed the option (known as the Good Time Rate Option and Approval Form, in order to waive incentive wages and to be eligible to earn good time at the rate of 30 days for every 30 days served.² The Petitioner does not contest that he signed this option in 1999. The pertinent part of the Option Agreement states as follows:

"In accordance with R.S. 15:571.3, I do hereby proclaim that I wish to become eligible to receive good time at the rate of 30 days for every 30 days in actual custody.

It is my clear understanding that if this option is approved..., **I cannot revoke it during the sentence or term for which I am incarcerated.**

I understand that if I am approved to become eligible... **I will not receive incentive wages....**

An obvious reason for not allowing revocation of the decision to give up incentive wages is to prevent a situation wherein an inmate forfeits good time during disciplinary proceedings and then decides that since he will not get out significantly earlier than he would with otherwise, he should revoke his option and demand incentive wages instead.

Although the motive for revocation may be different herein, revocation of the option is precisely what the Petitioner is seeking in this complaint. According to the undisputed record, the Petitioner became eligible for early release on good time parole supervision in July 2003. At that time, he determined (for personal reasons stated in the petition) that he would rather serve his full sentence in the custody of the Department, rather than be released on good time parole supervision, a seemingly unique decision by one who has opted for increased good time eligibility. The Petitioner does not allege that he was coerced or unduly influenced to sign the option giving up incentive wages, but simply that because he has changed his

¹ The good time rate under this statute, as of 1991, was 30 days for every 30 days served. Prior to 1991, an inmate who had not specifically opted for increased good time eligibility (30 days/30 days) earned 15 days for every 30 served.
² See Exh. A, the Rate Option signed by the Petitioner dated 12/28/99 and approved by the prison administration on 1/3/00.

mind about wanting to get out of prison early, the Department should allow him to revoke the option and to receive incentive wages that he asserts are past due and presently due.

There is no legal basis for the Petitioner's complaint. The Department's explanation of the denial of relief adequately addresses the issue:

"We find that signed the good time rate option and approval form requesting increase good time at the rate of 30 days for every 30 days in actual custody. With increased good time, under Act 138, you were eligible for release on March 16, 2003. You waived this release signing a statement on February 25, 2003, that you wish to remain in the custody of the DOC until completing the sentence on October 5, 2007. You are not eligible to earn regular good time at the rate of 15 days per month nor incentive wages. Your refusal of release on diminution of sentence on March 16, 2003 did not void your request dated December 28, 1999."³

The record contains the statement signed by the Petitioner that he "did not want to be released from Allen Correctional Center on [his] good time date of March 16, 2003", and that he "wants to remain in the custody of the Department...pending [his] full term date of October 2007."⁴

According to the First Step Respondent in the Record, signed by the Warden on July 3, 2003, "I asked you this date if you wished to withdraw the ARP and be released and you told me that you did not want that."⁵

There is nothing in the record to support the Petitioner's claim that he is entitled to revoke his good time rate option from 1999. The option clearly prohibited the relief sought in this case, and since there is no allegation that the option was involuntarily or unknowingly signed at the time, there is no legal basis for relief. Clearly, the petitioner is free to leave prison at any time he chooses, unless he forfeits good time that would extend his eligibility date, which is unlikely, given the amount of time he has accumulated.

The Petitioner's argument is simply a misinterpretation of what he believes the law to be. The illogic of his argument is evidenced by the statement that if "the good time option ...remains intact, **complainant is being illegally detained n the physical custody of the Department irregardless of the fact that it was by choice of his own.**" The Petitioner's further argument is likewise without a legal basis, i.e. that if the option is maintained, the Department must be ordered to force his release over his objection or alternatively, they must give him ordinary good time and incentive wages back to the date of the original signing of the option in 1999. Neither alternative is mandated of this Court. On the contrary, this Court can only reverse the Departments' decision herein if it violates the petitioner's rights or is manifestly erroneous or arbitrary or in violation of the law. None of those elements apply to the decision in this case. The

³ See Exh. A, the final agency decision dated 8/20/03.

⁴ See Exh. A, the statement signed by Carton Monta.

⁵ Exh. A, the Warden's response to the request for incentive wages and a new time computation sheet showing the earning of regular (15 days) of good time credits per month.

Departments decision to rely on the option form, absent any evidence of coercion or misunderstanding of the clear language therein, is certainly reasonable. Further, there is no law that mandates the relief sought herein.


The option is binding on the Petitioner once he signed it, and absent a legal impediment to good time eligibility, the Department was bound to classify the Petitioner as eligible for increased good time. Neither could unilaterally without lawful reason, revoke the option, as the petitioner seeks to do herein.

Consequently, I suggest that, without any legal basis to require the Department to pay incentive wages to the Petitioner, or to otherwise revoke the good time option form, and considering the limits on this Court's authority on review, the Department's decision to deny relief must be affirmed. This appeal appears to be frivolous and subject to a PLRA strike, but I defer that decision to the Court, after its own de novo consideration of the record.

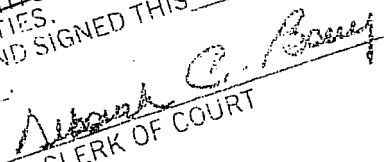
COMMISSIONER'S RECOMMENDATION


After reviewing the administrative record, together with the law applicable, for reasons hereinabove stated, it is the recommendation of this Commissioner that this Court affirm the Department's decision, and to dismiss this appeal with prejudice at the Petitioner's costs.

Respectfully submitted this 4th day of May 2005 in Baton Rouge, Louisiana.


RACHEL PITCHER MORGAN
COMMISSIONER, SECTION A
19TH JUDICIAL DISTRICT COURT

WE HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS/JUDGMENT/ORDER/COMMISSIONER'S RECOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED TO: ALL PARTIES.
2005. Done and signed this 04 DAY OF May


DEPUTY CLERK OF COURT

FILED
MAY 04 2005

BY: CLERK OF COURT
COMMISSIONER CT. SEC. A