

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0321

JOSEPH SMITH

VERSUS

**RICHARD STALDER, SECRETARY, LOUISIANA DEPARTMENT
OF CORRECTIONS, PRISCILLA PITRE, DOC RECORDS
ANALYST, ALLEN CORRECTIONAL CENTER**

Judgment Rendered: December 28, 2006

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**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Case No. 527,979**

The Honorable Timothy E. Kelley, Judge Presiding

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**Joseph Smith
Kinder, Louisiana**

**Plaintiff/Appellant
In Proper Person**

**Charles Sam Jones, III
Deridder, Louisiana**

**Counsel for Plaintiff/Appellant
Joseph Smith**

**William L. Kline
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellee
Richard Stalder**

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

*EJG del
JLW
JH*

GAIDRY, J.

This is an appeal from a trial court judgment dismissing a prisoner's suit for judicial review. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

The plaintiff, inmate Joseph Smith, appeals a trial court judgment dismissing his petition for judicial review of Administrative Remedy Procedure (“ARP”) Number ALC-2004-953. In his ARP, Smith complained that the Department of Corrections (“DOC”) was arbitrarily denying him good time credits towards his sentence.

Smith pled guilty to committing aggravated incest sometime between July 31, 1992 and October 31, 1993, and forcible rape sometime between February 15, 1993 and February 15, 1995. He was sentenced to twenty years on the charge of aggravated incest and twenty-five years on the charge of forcible rape, with the two sentences to run concurrently.

Pursuant to Act 150, effective August 1994, which amended La. R.S. 15:571.3(D) to prohibit good time eligibility for any person convicted a second time of a crime of violence, DOC denied Smith the opportunity to earn diminution of sentence.¹ Smith disagreed with this decision, since the exact dates of his offenses were not clear and the offenses *could have* been committed prior to the effective date of Act 150.

Smith filed an ARP requesting that DOC be prohibited from designating specific dates on which the offenses occurred in order to apply Act 150 to deny him good time eligibility, and that he be allowed to earn good time credits towards his sentence. After exhausting his administrative remedies, he filed a petition for judicial review.

¹ Smith pled guilty to armed robbery in 1974.

After oral arguments at which Smith was present and represented by counsel, the Commissioner² recommended that the court maintain the administrative decision to deny relief. The district court adopted the Commissioner's report as reasons and rendered judgment affirming the administrative decision as neither arbitrary, capricious, manifestly erroneous, nor in violation of any of Smith's rights. The judgment dismissed the petition at Smith's cost. Smith filed this appeal.

DISCUSSION

Louisiana Revised Statutes 15:1177, which governs judicial review of administrative acts, provides in part:

A. Any offender who is aggrieved by an adverse decision, excluding decisions relative to delictual actions for injury or damages, by the Department of Public Safety and Corrections or a contractor operating a private prison facility rendered pursuant to any administrative remedy procedures under this Part may, within thirty days after receipt of the decision, seek judicial review of the decision only in the Nineteenth Judicial District Court or, if the offender is in the physical custody of the sheriff, in the district court having jurisdiction in the parish in which the sheriff is located, in the manner hereinafter provided:

.....

(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 abuse of discretion or clearly unwarranted exercise of discretion.
- (f) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand

² The office of the Commissioner of the Nineteenth Judicial District Court was created by LSA-R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. The Commissioner's written findings and recommendations are submitted to a district judge, who may accept, reject, or modify them. La. R.S. 13:713(C)(5).

and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

After a thorough review of the record, it is clear that the district court did not err in affirming the administrative decision. As noted by the Commissioner, Smith acknowledged on the record when he pled guilty that he committed a forcible rape during the period of February 15, 1993 to February 15, 1995. By doing so, he admitted that the crime was committed during any of those dates, from the first to the last. He had the opportunity to object if he disagreed with any of the dates, but did not do so. At the time he pled guilty, he was on notice that statutory law – La. R.S. 15:571.3(D) – in effect since August 1994, prohibited eligibility for good time if the forcible rape was committed after that date and was his second crime of violence. Smith concedes that he has a prior conviction for armed robbery, a crime of violence, and thus the conviction for forcible rape would result in ineligibility for good time.

DOC is required by La. R.S. 15:571.3(D) to prohibit good time to anyone who committed a second crime of violence after July 1994. DOC considered the entire range of time during which Smith acknowledged a forcible rape was committed in determining that he was ineligible to receive good time. We do not find this decision to be arbitrary, capricious, manifestly erroneous, or in violation of any of Smith's rights.

DECREE

The judgment of the trial court dismissing Smith's petition for judicial review with prejudice and assessing costs is affirmed. Costs of this appeal are assessed to plaintiff, Joseph Smith.

AFFIRMED.