

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0853

TERENCE SIAS

VERSUS

WARDEN JIM ROGERS, DEPT. OF CORRECTIONS SECRETARY,  
PCC MAIL ROOM ADMINISTRATORS

**Judgment rendered February 9, 2007.**

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Appealed from the  
19th Judicial District Court  
in and for the Parish of East Baton Rouge, Louisiana  
Trial Court No. 529,035  
Honorable Kay Bates, Judge

\* \* \* \* \*

TERENCE SIAS  
DEQUINCY, LA

DEBRA A. RUTLEDGE  
BATON ROUGE, LA

PLAINTIFF-APPELLANT  
IN PROPER PERSON

ATTORNEY FOR  
DEFENDANT-APPELLEE  
RICHARD STALDER

\* \* \* \* \*

**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

*Downing, J. concurs.*

**PETTIGREW, J.**

This action was filed by an inmate seeking judicial review of a disciplinary decision made by the Louisiana Department of Public Safety and Corrections ("DOC"). The district court, upon recommendation of the commissioner, rendered judgment in favor of DOC and against the inmate, dismissing the inmate's suit at his cost. From this judgment, the inmate now appeals to this court.

Petitioner, Terence Sias, an inmate housed at C. Paul Phelps Correctional Center in Clinton, Louisiana, initially filed a request on January 24, 2005, seeking judicial review<sup>1</sup> in the 19<sup>th</sup> Judicial District Court of an administrative decision rendered in Disciplinary Board Appeal No. PCC-2003-231. Sias alleged therein that he was found guilty of violating Rule #5 (Theft) for making copies of blank legal documents.<sup>2</sup> For this infraction, Sias further alleged that he was subjected to a loss of "good time."<sup>3</sup> By way of relief, Sias sought restoration of the "good time" he lost as a consequence of his conviction, and expunction of his record. In addition, Sias also set forth a claim for damages resulting from his alleged wrongful conviction.

In his Screening Report, the 19<sup>th</sup> Judicial District Court Commissioner observed that the petition in this matter presented "a jurisdictional conflict." The commissioner noted:

While a request for judicial review is heard on the appellate jurisdiction of this Court, a claim for damages must be heard on the original jurisdiction of a district court. Pursuant to R.S. 15:1177(C), damage claims cannot be raised in a request for judicial review and must be filed separately as original civil actions. Furthermore, the legislature has provided that venue

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<sup>1</sup> Judicial review is available pursuant to La. R.S. 15:1177. Because this is a suit by an inmate, this matter was assigned to a commissioner to conduct all proceedings and make a recommendation to the district court. See La. R.S. 13:713.

<sup>2</sup> In his decision, Warden Rogers noted that Sias, while assigned to the prison law library, was advised by the officer who reported him that legal forms must be filled out with a prisoner's name and DOC number before being copied.

<sup>3</sup> It appears from the record that Sias was charged on May 29, 2003, with violations of Disciplinary Rules #22 and #5 (Theft and Disobedience, Aggravated). Following a disciplinary hearing on June 2, 2003, Sias was adjudged to be guilty of the rule violations and sentenced to eight (8) days extra duty, CTS; loss of two (2) weeks yard and recreation privileges, both imposed, together with a forfeiture of sixty (60) days good time and eight (8) days extra duty (suspended ninety (90) days). Sias appealed from the decision of the Disciplinary Board and alleged that this was excessive due to his prior good conduct record. In an appeal decision rendered August 29, 2003, Warden Rogers upheld the decision of the Disciplinary Board and denied Sias's appeal. Sias subsequently appealed to the DOC Secretary. In a decision rendered September 12, 2003, Linda Ramsay, on behalf of DOC Secretary Richard L. Stalder, affirmed the earlier decisions of the Disciplinary Board and Warden Rogers. In his Petition for Judicial Review, Sias alleged that he did not receive notice of the decision of the Secretary until January 5, 2005.

for a claim asserting damages must be raised in the parish where the petitioner was housed when the cause of action arose. R.S. 15:1184(F). Thus, if this matter were to proceed for judicial review, the damage claim would first need to be dismissed.

Accordingly, the commissioner recommended that Sias's request for monetary damages be stricken from the instant pleadings, thereby allowing this matter to proceed as a request for judicial review of Sias's disciplinary board appeal. The district court thereafter on April 6, 2005, rendered judgment striking the damage claim from Sias's request for judicial review. On April 12, 2005, the commissioner issued a Service Order and noted that upon review of the pleadings, the district court "has found that the claim raised is a claim subject to judicial appellate review in accordance with R.S. 15:1171 *et seq.*, with exclusive venue in the 19<sup>th</sup> Judicial District Court." As a result, the commissioner ordered that a copy of said Service Order and the suit be served on the Secretary of DOC for the filing of responsive pleadings. On May 3, 2005, DOC filed a true copy of the entire Disciplinary Board appeal, a copy of the cassette tape of the Disciplinary Board appeal, together with an answer denying that Sias's due process rights had been violated.

On September 22, 2005, the commissioner issued his recommendation to the district court urging that the final agency decision be affirmed and that Sias's request for judicial review be dismissed with prejudice at his costs. The commissioner noted in pertinent part:

The Disciplinary Board imposed a penalty of eight days extra duty and a loss of 2 weeks yard and recreational privileges for the Aggravated Disobedience conviction. The penalty in that matter does not prejudice a substantial right of [Sias] or constitute an atypical deprivation as required by R.S. 15:1177(A)9. [Sias'] Aggravated Disobedience conviction and penalty is not subject to review by this Court. *Sandin v. Conner* 115 S. Ct. 2293 (1995). The disciplinary record further indicates [Sias'] penalty for the theft charge consisted of a loss of 60 days good time and a suspended penalty of 8 days extra duty. Therefore, the petitioner's theft conviction and penalty will be reviewed in this matter as a loss of good time does constitute an atypical deprivation implicating [Sias'] substantial rights.

.....

Initially this Commissioner notes that [Sias] has not demonstrated he was prejudiced by any delay in obtaining the Secretary's decision. [Sias] complains that he did not receive the September 13, 2003 final decision until January 1 [sic], 2005. This Commissioner finds [Sias] timely filed the request for judicial review in this matter and was not prejudiced by any delay in obtaining the final agency decision. This Commissioner further

finds that a policy which requires an inmate to place his name and inmate number on a legal form prior to making a copy does not violate [Sias'] due process rights. The administrative record indicates the legal forms in question were made available at the library and inmates we [sic] merely required to fill in their names and inmate number prior to making copies. This Commissioner finds this policy allows inmates to easily obtain the required legal materials and restricts inmates from removing blank forms that may be used to barter in the institution with other inmates. The policy at issue does not restrict an inmate's ability to prepare legal pleadings and does not prejudice an inmate's due process rights.

Additionally, the administrative record indicates that [Sias] removed a blank form from the library and requested another corrections employee make copies after being advised he was not allowed to make copies of blank legal forms. The record does indicate that [Sias] removed a blank form from the library for purpose of obtaining copies that were not permitted at his institution. The administrative record does support the finding [Sias] committed a violation of the disciplinary rule regarding theft as [Sias] used misrepresentation to obtain copies after being clearly advised the copies were not allowed. Disciplinary Rule #22 – Theft includes circumstances where fraud is used to secure a material return and where an inmate has institutional property under his control without permission. The record evidences [Sias] violated the policy of the institution in this matter when he obtained the copies of the blank legal forms and the penalty imposed in this matter is clearly within the discretion afforded his disciplinary board.

Accordingly, it is the recommended [sic] of this Commissioner that the final agency decision rendered in this matter be affirmed and [Sias'] request for judicial review be dismissed with prejudice at [Sias'] cost.

On October 13, 2005, Sias filed a pleading captioned "Traverse to Commissioner's Recommendation" wherein Sias denied removing any legal form from the law library and alleged that he was deprived of due process of law when he was punished "for conduct that was not prescribed in the posted policy at the time of the disciplinary incident." Sias further alleged that it was incumbent upon the Disciplinary Board, the Warden, the DOC Secretary, and the Commissioner to cite the "precise policy rule that was violated." Upon review of the record and consideration of a traversal of the commissioner's report filed by Sias, the 19<sup>th</sup> Judicial District Court, on November 2, 2005, agreed with the commissioner's findings and dismissed Sias's suit.

From this judgment, Sias has appealed to this court.<sup>4</sup>

Following a thorough review of the record in this matter, we agree with the findings of the commissioner and conclude that the district court was correct in dismissing Sias's suit.

For the above and foregoing reasons, the judgment of the district court is hereby affirmed. All costs associated with this appeal are assessed against petitioner/appellant, Terence Sias.

**AFFIRMED.**

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<sup>4</sup> It appears that following the rendition of judgment by the district court, Sias applied for a supervisory writ from this court. As Sias failed to include a copy of the district court's judgment, said writ was denied. **Sias v. Rogers**, 2005 CW 2424. Sias thereafter sought a supervisory writ from this court and this time included a copy of the judgment being appealed. This court granted the writ and ordered the district court to rule on Sias's pending motion and order for appeal. **Sias v. Rogers**, 2005 CW 2702.