

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 1834

JAMES TREADWELL

VERSUS

RICHARD STALDER, SECRETARY,
LOUISIANA DEPARTMENT OF CORRECTIONS

Judgment Rendered: **JUL 6 2007**

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Case No. 530,983

The Honorable R. Michael Caldwell, Judge Presiding

J. Rodney Baum
Baton Rouge, Louisiana

Counsel for Plaintiff/Appellant
James Treadwell

James Treadwell
Winnfield, Louisiana

Plaintiff/Appellant
In proper person

Melinda L. Long
Baton Rouge, Louisiana

Counsel for Defendant/Appellee
Richard Stalder, Secretary

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

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GAIDRY, J.

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

FACTS AND PROCEDURAL HISTORY

The plaintiff, inmate James Treadwell, appeals a district court judgment dismissing his petition for judicial review of Disciplinary Board Appeal Number DCC-2004-094. Treadwell was found guilty of escape, a violation of Disciplinary Rule 8, based on a July 25, 2004 incident where Treadwell, who was on work release, left his worksite for a four-hour period, apparently to visit his girlfriend and family. Treadwell was sentenced to a custody change and, after a special board hearing, a forfeiture of all good time earned prior to the escape (1,260 days) was ordered.

After exhausting his administrative remedies, Treadwell filed a petition for judicial review of the Louisiana Department of Public Safety and Correction's Disciplinary Board's decision, seeking to have his good time credits restored. Treadwell argued that his good time credits should be restored because he was not guilty of an escape, because escape from a work-release facility does not subject him to forfeiture of all earned good time, and because he was denied due process at the disciplinary board hearing. The Commissioner found that there was sufficient evidence in the record on which the Disciplinary Board could find that Treadwell did leave the worksite and violate the disciplinary rules regarding escape and that a forfeiture of all earned good time was appropriate, and a judgment was signed affirming the administrative decision and dismissing Treadwell's petition for judicial review.

Treadwell appealed from this judgment, arguing that the district court erred in refusing to overturn the forfeiture of good time.

DISCUSSION

After a thorough review of the record, we conclude that the district court did not err in upholding the decision of the Disciplinary Board in accordance with La. R.S. 15:1177.¹

Disciplinary Rule 8, entitled “Escape” states that “[a]n escape or attempt to escape from the grounds of an institution or from the custody of an employee outside a facility, successful or not, or the failure to return from a furlough is a violation.” At the time of Treadwell’s escape, La. R.S. 15:571.4(B)(1) provided for the forfeiture of all good time earned prior to the escape for “[a]n inmate who is sentenced to the custody of the Department of Public Safety and Corrections 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.”²

¹ La. R.S. 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 and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

² La. R.S. 15:571.4(B)(1) was later amended to specifically mention inmates who escape from a work-release facility, but the amendment did not become effective until several weeks after Treadwell’s escape.

Treadwell argues on appeal that the provisions of La. R.S. 15:571.4(B)(1) do not apply to him because he did not escape from a correctional facility or from the lawful custody of an officer, since he was housed in a work-release facility (not a correctional facility) and was in the custody of his employer (not an officer) at the time of his escape. In support of this assertion, Treadwell cites a first circuit case, *Chamblee v. Stalder*, 03-0061, p. 4 (La. App. 1 Cir. 11/7/03), 868 So.2d 88, 90, in which this court held that La. R.S. 15:571.4(B)(1) could not be applied under the circumstances to require forfeiture of all earned good time because there was no evidence that the work-release facility at issue in that case (City of Faith) was a correctional facility or that the inmate escaped from the custody of a law enforcement officer or correctional officer. Treadwell's situation is distinguishable from Chamblee's, however, in that Treadwell was housed at the Rapides Parish Work Release Center, which is run by the Rapides Parish Sheriff's Office, in contrast to the City of Faith, where Chamblee was housed, which is run by a private corporation. Thus, Treadwell *was* in the custody of law enforcement when he escaped and would be eligible for good time forfeiture in accordance with La. R.S. 15:571.4(B)(1).

In addition, Louisiana Administrative Code, title 22, part I, § 333, which provides for rules related to the forfeiture of good time from inmates who escape, as set forth in La. R.S. 15:571.4(B), contains the following definition of "Simple Escape":

the intentional, unauthorized departure under circumstances wherein human life was not endangered of an inmate from the grounds of an institution, a designated area or place within an institution, the custody of Corrections' personnel while off the grounds of an institution, the custody of any law enforcement officer, *or the departure of a work release inmate from the designated area where he is legally confined*; the failure of an inmate participating in a work release program to report or return from his planned employment or other activity at the

appointed time; or the failure of an inmate on furlough to return to his place of confinement at the appointed time. (Emphasis added).

It is clear from the record that Treadwell, a work release inmate, left the designated area where he was legally confined without authorization.³ Furthermore, the above definition of “simple escape” was given as part of the rules governing the forfeiture of all earned good time under La. R.S. 15:571.4(B). Therefore, Treadwell’s actions did qualify him for forfeiture of all earned good time under La. R.S. 15:571.4(B).

Finally, Treadwell argues that the forfeiture of good time should be reversed because he was denied due process at the disciplinary board hearing when he was not allowed to have his privately-retained counsel present. A review of the record reveals that at the initial disciplinary hearing, Treadwell advised the board that he was in the process of retaining private counsel and would like a continuance in order to do so. The board continued the hearing for the amount of time requested by Treadwell to allow him to retain private counsel. At the rescheduled hearing, Treadwell appeared without counsel, failed to advise the board that his privately-retained counsel was running late, failed to request another continuance, and told the board that he would like to be provided with inmate counsel. A letter from Treadwell’s attorney states that he arrived late at the hearing and was not allowed in; however, since Treadwell did not even inform the Board that he had hired an attorney, it is disingenuous for him to now argue that they prevented him from having his attorney present. It is clear from the record that Mr. Treadwell was not

³ Treadwell attempts to argue on appeal that he never left his work-release assignment. He offers multiple implausible explanations for the statements originally given by his employer and his grandparents stating that he left his jobsite on the day in question and went to visit his girlfriend and his grandparents. However it is clear from a review of the evidence in the record that the Disciplinary Board did not err in finding his testimony incredible and concluding that Treadwell did, in fact, leave his designated work area.

denied the opportunity to have private counsel present at his disciplinary hearing, and his argument that he was denied due process is meritless.

DECREE

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

AFFIRMED.