

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA


COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0570

MICHAEL ALLEN

VERSUS

 RICHARD L. STALDER, SECRETARY, DEPARTMENT OF  
PUBLIC SAFETY AND CORRECTIONS; LINDA RAMSEY; LYNN  
COOPER, WARDEN, AVOYELLES CORRECTIONAL CENTER;  
GARY GREMILLION AND NIKKI CHENEVERT

*DATE OF JUDGMENT: November 2, 2007*

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
(NUMBER 534,978, DIV. "N"), PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

HONORABLE DONALD R. JOHNSON

\* \* \* \* \*

Michael Allen  
Cottonport, Louisiana

Plaintiff/Appellant  
In Proper Person

L. Bruce Dodd  
Baton Rouge, Louisiana

Counsel for  
Defendant/Appellee  
Louisiana Department of Public  
Safety and Corrections

\* \* \* \* \*

**BEFORE: PARRO, KUHN, AND DOWNING, JJ.**

**Disposition: AFFIRMED.**

KUHN, J.

Plaintiff-appellant, Michael Allen, an inmate at the Avoyelles Correctional Center in Cottonport, Louisiana, appeals the district court's judgment dismissing his suit for judicial review of an adverse decision of the Louisiana Department of Public Safety and Corrections (DPSC). We affirm.

### **FACTS AND PROCEDURAL BACKGROUND**

On June 2, 1998, Allen pled guilty to various crimes he had committed on four separate occasions and was sentenced to serve a total of ten years.<sup>1</sup> On March 6, 2003, Allen was released on parole as the result of a diminution of sentence and was to be supervised by the DPSC's Division of Probation and Parole for the remainder of his sentence, i.e., four years, ten months, and twenty-eight days.

Following his release, Allen was arrested on May 7, 2003, for a new felony charge arising from a May 3, 2003 incident. Allen did not bond out on the new felony charge and ultimately pled guilty to "Attempted 14:94E Illegal Use of Weapons by Drive by Shooting." On October 11, 2004, the district court imposed a five-year sentence with the DPSC, suspending two and one-half years, and the two and one-half year jail portion of the sentence with credit for time served was to run concurrently with any parole time.<sup>2</sup> The DPSC gave Allen credit for the time served in custody from May 7, 2003 through October 11, 2004 (523 days), but only toward the jail portion of his new sentence for his post-parole felony.

In response to Allen's "Motion to Amend Sentence to Reflect Jail Credits," the district court ordered that "Michael Allen is to receive credit for time served since the arrest and concurrent with parole time." Allen contends that since the

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<sup>1</sup> Allen received several sentences for the various crimes, but all were ordered to run concurrently.

<sup>2</sup> On December 9, 2004, the parole board revoked Allen's parole. Since the October 11, 2004 sentence was to run concurrently with any parole time, the October 11, 2004 sentence was subsumed into the four plus years Allen had to serve on his original ten-year sentence for which he was paroled.

current and latest sentence of incarceration was ordered to run concurrent with his parole sentence and since the sentencing court ordered credit for time served, he is entitled to dual jail credits on the new felony, as well as the four plus years that he had remaining to serve on his previous sentence for which parole was revoked.

Allen sought review of his time computation by filing a petition for an administrative remedy procedure with DPSC requesting that the time served from May 7, 2003 through October 11, 2004 be credited against the balance of his original sentence. Following its review process, DPSC denied the request finding that Allen was not entitled to receive credit toward the balance of his original sentence. Following DPSC's denial, Allen filed his petition for judicial review in district court.

After reviewing the pleadings and attachments in the case, the Commissioner for the district court recommended dismissal of Allen's suit with prejudice. On December 6, 2005, the trial court entered a judgment in accordance with the Commissioner's recommendations. Allen appeals.<sup>3</sup>

### **DISCUSSION**

Allen asserts that the district court erred in failing to award him credit against the balance of his original sentence for the time he served from May 7, 2003 to October 11, 2004. He cites La. R.S. 15:574.10, which in relevant part provides that "[w]hen a person is convicted in this state of a felony while on parole...his parole shall be deemed revoked as of the date of the commission of the felony...." Allen also relies on La. C.Cr.P. art. 880, which provides:

A defendant shall receive credit toward service of his sentence for time spent in actual custody prior to the imposition of sentence. Under the provisions of this Article, no defendant shall receive more

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<sup>3</sup> We note that the Commissioner's recommendation indicates that Allen would be released in "early 2007," while the DPSC records indicate a release date of "6/07/07." Since we are unable to definitively ascertain from the record whether Allen has been released from detention and the conditions of the release, which would possibly moot this appeal, we address the merits of his appellate contention.

than thirty days of jail credit for any calendar month while serving a term for consecutive sentences.

Allen concludes that he should be given credit toward the balance of his original sentence for time served in custody prior to his conviction for the post-parole felony.

DPSC asserts that the computations afforded Allen were correct, citing La. R.S. 15:574.9(E), which provides:

When the parole of a parolee has been revoked by the board for the violation of the conditions of parole, the parolee shall be returned to the physical custody of the Department of Public Safety and Corrections, office of corrections services, and serve the remainder of his sentence as of the date of his release on parole, subject to consideration by the board of any commutation of the sentence, and any diminution of sentence earned for good behavior while in the institution. The parolee shall be given credit for time served prior to the revocation hearing whether such time is served in a local detention facility, state institution, or out-of-state institution. *The parolee shall not receive credit for such time served prior to the revocation hearing where the revocation is based on the subsequent conviction of a crime*, in which case the parolee will receive credit for time served for the subsequent conviction pursuant to Code of Criminal Procedure Article 880. (Emphasis added.)

Since the revocation of Allen's parole was based on the subsequent conviction of a crime, DPSC concludes that La. R.S. 15:574.9(E) clearly applies and that Allen's time served prior to his conviction for the post-parole felony cannot apply toward his original sentence.

This issue has previously been addressed by this court in *Perry v. Day*, 2000-1291 (La. App. 1st Cir. 8/8/01), 809 So.2d 255. Perry, a felon on parole, was arrested on a charge of possession of a controlled dangerous substance on April 11, 1995. Perry either pled guilty or was found guilty of that felony on March 22, 1996 and sentenced to two and one-half years imprisonment, with credit for time served. As a result of the parole violation, Perry's parole was revoked, leaving a balance of nine years, seven months, and twenty-eight days on his original sentence. Although DPSC credited the time served from April 11, 1995 to March

22, 1996 on the post-parole felony, DPSC did not credit the time served to the balance on his original sentence. After DPSC denied Perry's request to credit the time served to his original balance, Perry appealed to the district court, which dismissed his claim. On appeal, this court affirmed, reasoning:

This statute [La. R.S. 15:574:9(E)] clearly states that a parolee *shall not* receive credit for such time served prior to the revocation hearing where the revocation is based on the subsequent conviction of a crime. In such a case, the parolee is to receive credit for time served for the subsequent conviction pursuant to Louisiana Code of Criminal Procedure article 880, which provides that "[a] defendant shall receive credit toward service of his sentence for time spent in actual custody prior to the imposition of sentence."

*We interpret these provisions, as did the Commissioner, to mean that all jail credits, resulting from the arrest on the post-parole crime for which Perry was later convicted, shall be applied only to the sentence related to the post-parole felony conviction. Because Perry's revocation in this case is based on his March 22, 1996 conviction of a felony, he is not entitled to credit for the time served prior to his revocation with respect to the remainder of his original sentence.... (Emphasis added in part. Footnote omitted.)*

*Perry*, 2000-1291 at p. 4, 809 So.2d at 257.

Similarly in this case, because revocation of Allen's parole was based on a subsequent felony conviction, all jail credits resulting from the arrest on the post-parole crime for which he was later convicted apply only to the sentence related to the post-parole felony conviction. Thus, Allen is not entitled to a credit toward the remainder of his original sentence for the time served prior to the effective date of his parole revocation.

#### **DECREE**

For these reasons, the district court's judgment is affirmed. Appeal costs are assessed against plaintiff-appellant, Michael Allen.

**AFFIRMED.**