

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0781

HAROLD JOE BLACK

VERSUS

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL.

—
**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 579,141, Section 26
Honorable Kay Bates, Judge Presiding**
—

**Harold Joe Black
Homer, LA**

**Plaintiff-Appellant
In Proper Person**

**Jonathan R. Vining
Baton Rouge, LA**

**Attorney for
Defendant-Appellee
James LeBlanc, Secretary,
Department of Public Safety
and Corrections**

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Judgment rendered October 29, 2010

PARRO, J.

Harold Joe Black, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment of the district court, affirming DPSC's decision to deny "good time" eligibility and dismissing his petition for judicial review. Based on our review of the record, we affirm the judgment.

BACKGROUND

Mr. Black was adjudicated a second felony habitual offender under LSA-R.S. 15:529.1, and on August 30, 2000, he was sentenced to fifteen years of imprisonment at hard labor as a result of his conviction on the charge of distribution of cocaine, a felony violation of the Controlled Dangerous Substances Law. At some point, Mr. Black became aware that he was not accruing "good time" on his current sentence, and he filed a grievance pursuant to the Corrections Administrative Remedy Procedure (CARP) established by LSA-R.S. 15:1171, *et seq.*, contending that denial of "good time" was improper.

Mr. Black's grievance was denied at the first step, with the following language:

This is in response to the first step of your ARP where you are requesting your release date be calculated with your being eligible for goodtime [sic].

I have reviewed your time computation, court documents contained in the record as well as documents you provided and find that your release dates have been accurately calculated. The courts in Caddo Parish provided a copy of the second felony habitual offender bill which indicates you have a prior felony of Distribution of Marijuana. In the transcript you provided the Judge made it clear that the offense was well within the 10 year period. The fact that you were sentenced as an habitual offender is not something to be challenged with the Department of Corrections as we must follow the order of the courts[;] it is to be challenged with the sentencing courts. As a habitual offender [with] Distribution of Cocaine as your instant offense you are not entitled to earn good time based with either your prior or your instant [offense]. Pursuant to Lonzell Richards [v.] Richard Stalder the use of the instant offense applied to inmates who committed [their] instant offense on or after 2/23/88[;] therefore, either charge would deny you good time.

Relief requested is denied.

Mr. Black was not satisfied with this response and proceeded to step two of the CARP procedure; however, his grievance was denied at that level as well.

Thereafter, Mr. Black filed a petition for judicial review with the district court. In his petition, Mr. Black contended that he had been improperly sentenced as a second felony offender because the sentence on his first offense had been amended erroneously. This allegedly improper amendment to his sentence had required him to stay under DPSC supervision longer and had prevented the ten-year cleansing period provided by LSA-R.S. 15:529.1(C) from elapsing. Specifically, Mr. Black notes in the petition that his original full-term date on his first offense should have been August 12, 1987; however, he was not released from DPSC supervision until August 12, 1988. Because of that one-year difference, he was still within the ten-year period beyond which the previous offense could not be counted for habitual offender purposes when he was arrested for the second felony in January 1998.

The matter was assigned to a commissioner, who submitted a report to the district court on the merits of the case. The commissioner's report determined that Mr. Black's arguments were without merit and recommended that his appeal be dismissed at his cost. After a thorough *de novo* review, the district court rendered judgment denying Mr. Black's claim for "good time" eligibility, dismissing the appeal, and adopting the commissioner's report as its written reasons. Mr. Black then appealed to this court.

DISCUSSION

The record indicates that Mr. Black was arrested in July 1984 on the charge of distribution of marijuana, a felony violation of the Controlled Dangerous Substances Law. He pled guilty to that offense and was sentenced to three years imprisonment at hard labor, with that sentence being suspended. Mr. Black was then placed on three years of active, supervised probation. Nevertheless, his probation was revoked after a hearing on August 13, 1985, and the court ordered that the "sentence which was originally imposed be served in this case." The record further indicates that Mr. Black was subsequently released on parole on August 12, 1986, and that he apparently remained in the legal custody and control of the DPSC while on parole, until August 12, 1988, when the maximum sentence for the marijuana conviction expired.

After a thorough review of the record, it is clear that Mr. Black was not released from DPSC supervision on his first offense until August 12, 1988.¹ He was subsequently arrested on the current charge of distribution of cocaine on January 14, 1998. Based on those dates, Mr. Black was clearly within the ten-year period within which the previous and current convictions could be used for habitual offender purposes pursuant to LSA-R.S. 15:529.1(C). Moreover, once Mr. Black was sentenced as a second felony offender, he was not entitled to diminution of sentence or accrual of "good time" in accordance with LSA-R.S. 15:571.3(C)(1)(s). Therefore, we conclude that the evidence supports the recommendation of the commissioner and her conclusions of law, which were adopted by the district court after a careful *de novo* review of the entire record. Accordingly, we affirm the judgment of the district court in accordance with Uniform Rules-Courts of Appeal Rule 2-16.1.B. All costs of this appeal are assessed to the plaintiff, Harold Joe Black.

AFFIRMED.

¹ As noted in the commissioner's report, if Mr. Black has concerns that his time under DPSC supervision pertaining to his first offense was erroneously extended, those concerns are more properly addressed by the sentencing court or the court of appeal having jurisdiction over that sentencing court.