

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 2178

HAROLD JOE BLACK

VERSUS

**JOHN ONEILLION, KAYLA CHAPMAN, ED SHIRLEY, WARDEN
TERREL TERRELL, DEPUTY WARDEN ESTER, WARDEN
ANTHONY ALLEMONDS AND SERGEANT CALLCOTE**

Judgment Rendered: June 8, 2007

On Appeal from the Nineteenth Judicial District Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No. 542,701

Honorable Wilson Fields, Judge Presiding

Harold Joe Black
Allen Correctional Center
Kinder, LA

Plaintiff/Appellant
In Proper Person

William Kline
Department of Corrections
Baton Rouge, LA

Counsel for Appellees
Department of Public Safety
& Corrections

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

McCLENDON, J.

In this suit for judicial review filed by Mr. Harold Joe Black, a prisoner incarcerated in the Allen Correctional Center, the Nineteenth Judicial District Court found that the court lacked jurisdiction based on the prisoner's failure to exhaust administrative remedies. The petition for review was dismissed. Mr. Black appealed. We affirm.

On appeal, Mr. Black asserts that the warden failed to respond to his request for administrative remedy filed on October 22, 2005. Mr. Black cites **Sims v. Wackenhut Health Services, Inc.**, 97-1147 (La.App. 1 Cir. 2/20/98), 708 So.2d 1140, 1142, writ denied, 98-0747 (La. 5/1/98), 718 So.2d 417, and argues that the warden's failure to reply in a timely fashion allowed him to take the matter directly to the district court.

APPLICABLE LEGAL PRECEPTS

The procedures set out in the Corrections Administrative Remedy Procedure Act provide the exclusive remedy available to inmates to preserve a cause of action against the department or its employees, including a claim for monetary relief. See LSA-R.S. 15:1171 & 15:1172; **Sims**, 97-1147 at p. 4, 708 So.2d at 1142. A state court is precluded from entertaining an offender's complaint which falls under the purview of the administrative remedy procedure until the offender has exhausted the remedies provided to him by the procedure. If an offender fails to initiate or pursue timely his administrative remedies through the procedure established by the statute, and the applicable regulations authorized by LSA-R.S. 15:1172B, his claim is deemed abandoned and any petition he files must be dismissed, with prejudice. If at the time the petition is filed the process is ongoing, and has not yet been completed, the suit shall be dismissed without prejudice. LSA-R.S. 15:1172 (C).

The applicable version of Louisiana Administrative Code 22:I.325G provides, in pertinent, as follows:

1. First Step (Time Limit 40 days)

a. The inmate commences the process by writing a letter to the warden, in which he briefly sets out the basis for his claim, and the relief sought (refer to section "Procedure-Initiation of Process" [Subsection F] for the requirements of the letter). The inmate should make a copy of his letter of complaint and retain it for his own records. The original letter will become a part of the process, and will not be returned to the inmate. The institution is not responsible for furnishing the inmate with copies of his letter of complaint. This letter should be written to the warden within 90 days of an alleged event. (This requirement may be waived when circumstances warrant. The warden, or his designee, will use reasonable judgment in such matters.) The requests shall be screened by the ARP Screening Officer and a notice will be sent to the inmate advising that his request is being processed or is being rejected. The warden may assign another staff person to conduct further fact-finding and/or information gathering prior to rendering his response. The warden shall respond to the inmate within 40 days from the date the request is received at the First Step.

Louisiana Administrative Code 22:I.325G(4) provides deadlines and time limits. Paragraph 4(a) specifically provides that:

a. No more than 90 days from the initiation to completion of the process shall elapse, unless an extension has been granted. Absent such an extension, expiration of response time limits shall entitle the inmate to move on to the next Step in the process. Time limits begin on the date the request is assigned to a staff member for the First Step response.

ANALYSIS

The record before us on appeal contains only one request for administrative procedure concerning Mr. Black's requests to be given more time in the law library. On October 25, 2005, the warden notified Mr. Black that his request was accepted and that a response to the claim would "be issued within 40 days of this date." When Mr. Black did not receive a response within the applicable time limit, LAC 22:I.325G(4)(a) allowed him

to proceed to the next step of the administrative remedy process. However, the record contains no evidence that he pursued the next step. Thus, the process is ongoing and has not yet been completed. In such a case, LSA-R.S. 15:1172(C) provides that “the suit shall be dismissed without prejudice.”

Sims is factually distinguishable. In **Sims**, this court found that the circumstances were particularly egregious and the inmate, who had sought administrative relief to obtain the quality of medical treatment necessary to save his leg, had lost the leg through amputation before filing suit. **Sims**, 97-1147 at pp. 2-3, 708 So.2d at 1141. Because the prisoner had never been notified by a staff member that his administrative remedy request was being processed, the time limits for a response never commenced, and the inmate could not proceed to the next step. Under those particular facts, the **Sims** panel upheld the inmate’s suit for damages in district court, without the need to complete an administrative remedy process that could not have saved a leg that was already lost. **Sims**, 97-1147 at pp. 5-7, 708 So.2d at 1142-43.

CONCLUSION

For these reasons, we find no error in the district court’s dismissal of Mr. Black’s petition, without prejudice. We affirm the judgment, and assess the costs of the appeal to plaintiff-appellant, Mr. Black.

AFFIRMED.