

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0251

*DNC
PGBM*

HAROLD JOE BLACK

VERSUS

**LIEUTENANT KEVIN JORDAN, WARDEN TIMOTHY WILKINSON and
LINDA RAMSEY**

JMM

Judgment Rendered: SEP 10 2010

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On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. 575,008

Honorable R. Michael Caldwell, Judge Presiding

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Harold Joe Black
Winn Correction Center
Homer, Louisiana

Plaintiff/Appellant
In Proper Person

Jonathan R. Vining
Baton Rouge, Louisiana

Counsel for Defendant/Appellee
James M. LeBlanc

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BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Harold Joe Black, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department), appeals the trial court judgment dismissing his petition for judicial review. We affirm.

Plaintiff was charged with violating Prison Disciplinary Rule #3 (Defiance). He was subsequently found guilty by the Disciplinary Board and sentenced to a custody change and loss of canteen privileges. After exhausting his administrative remedy by appealing the Disciplinary Board's decision, plaintiff filed a Petition for Judicial Review, alleging that the rule violation was "clearly unwarranted." In response thereto, the Department filed a peremptory exception raising the objection of no cause of action, asserting that plaintiff "suffered no significant deprivation of his rights" as the only penalties received by plaintiff were ten days of isolation and loss of store privileges.

After considering the record and applicable law, the commissioner recommended that there be judgment in favor of the defendants granting the exception of no cause of action and dismissing plaintiff's suit with prejudice. Thereafter, following its *de novo* review of the record, the trial court adopted the commissioner's recommendation and dismissed plaintiff's action. Plaintiff appealed.

Judicial review of administrative decisions is governed by LSA-R.S. 15:1177A(9), which provides:

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. (Emphasis added).

In its recommendation, the commissioner initially noted that the penalty in this matter did not involve a forfeiture of good time or constitute an atypical deprivation of a substantial right of the plaintiff under LSA-R.S. 15:1177A(9). The commissioner, stating that the statute authorizes a court to intervene in the decision of the Department only if "substantial rights" have been violated, concluded that plaintiff has no constitutional or substantial right to any particular housing classification, job classification, or recreational hobby craft. See Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995); Meachum v. Fano, 427 U.S. 215, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976).

After a thorough review of the record and relevant jurisprudence, we find no error of law or abuse of discretion by the trial court. Accordingly, we affirm the trial court's judgment in accordance with the Uniform Rules of the Louisiana Courts of Appeal, Rule 2-16.2A(2), (4), (5), (6), and (7). All costs of this appeal are assessed against plaintiff, Harold Joe Black.

AFFIRMED.