

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1415

FREDDIE CANN

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: APR 10 2013

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 600076

THE HONORABLE R. MICHAEL CALDWELL, JUDGE

Freddie Cann
Winnfield, Louisiana

Plaintiff/Appellant
Pro-Se

Debra A. Rutledge
Baton Rouge, Louisiana

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

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

McDONALD, J.

Plaintiff, Freddie Cann, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“DPSC”), appeals the trial court’s judgment affirming in part and reversing in part the DPSC’s determination that denied his request for recalculation of good time credits. For the following reasons, we affirm.

Background

Plaintiff, an inmate in the custody of the DPSC, filed this appeal of APR #PCC-2010-491, seeking judicial review in accordance with L.A. R.S. 15:1171 et seq. Plaintiff originally sought additional good time credits for two sentences that he was serving. In the first of the two sentences, he was convicted and sentenced in 1983 under Ouachita Parish docket #41127. In the second of the two sentences, he was convicted and sentenced in 1994 under Claiborne Parish docket #17401. Plaintiff’s claims were based on Act 649 of 2010 that amended L.A. R.S. 15:571.3B(1)(A), which allows eligible offenders to retroactively earn increased good time credits (35 days for every 30 served) for convictions that occurred after December 31, 1993.

Plaintiff was previously earning 30 days of good time for every 30 days he served on both sentences while he was in the custody of the DPSC until he was released on good time parole in 1998. In 2001, plaintiff absconded supervision which resulted in revocation of his parole and reincarceration in 2006. Plaintiff claimed that he was owed an additional five days per month of good time on both sentences back to the date of sentencing or 1992, whichever is earlier. The DPSC denied his request as to both sentences. The trial court, in a judgment dated April 16, 2012, affirmed the DPSC decision on the Ouachita Parish conviction from 1983 and reversed the decision on the Claiborne Parish conviction from 1994. The case was remanded to the DPSC to recalculate his good time on the latter

conviction. On May 24, 2012, Plaintiff filed a notice of appeal of the April 16, 2012, judgment and an order of appeal was signed on May 31, 2012. Plaintiff does not designate whether he intended to appeal all or only a part of the judgment. In his sole assignment of error he states, "The Court was in error when it allowed the calculations done by the Department of Corrections to not be corrected in compliance with Act 649 of the Louisiana Legislature." It would seem that he would not intend to appeal the part of the judgment pertaining to the Claiborne Parish conviction since it was remanded with instructions to give him the credit that he requested. In his brief he states the issues or questions of law to be "Whether Petitioner's conviction of 1983 is subject to retroactive application of good time Act 649 by Legislature." The brief goes on to discuss this conviction and does not discuss the 1994 conviction. Therefore, we will only address the earlier conviction.

1983 Ouachita Parish Sentence

As to the 1983 Ouachita parish sentence, DPSC denied any additional good time credits on the grounds that the plaintiff was convicted in 1983, well before the effective date of Act 649 (January 1, 1992). Therefore, the changes in Act 649 did not apply to the 1983 Ouachita sentence. Plaintiff argues that he is entitled to the application of the benefits of Act 649 to his older sentence based on the rule of lenity; however, the rule of lenity only applies when the law in question is ambiguous. See Moskal v. United States, 498 U.S. 103, 107-08, 111 S. Ct. 461, 465, 112 L. Ed. 2d 449 (1990). In the present case, the effective date of Act 649 L.A. R.S. 15:571.3B(1)(b) (emphasis added) clearly states:

(b) The provisions of Subparagraph (a) of this Paragraph shall be applicable to persons **convicted of offenses on or after January 1, 1992** and who are not serving a sentence for the following offenses:
(none of which are applicable in this case)

We find no merit to Plaintiff's argument concerning the good time credits on the Ouachita parish sentence. Accordingly, we agree with the trial court's denial of plaintiff's request to recalculate his good time credits regarding his Ouachita parish sentence.

Conclusion

Act 649 applies to convictions after January 1, 1992. Since the plaintiff in the 1983 Ouachita parish sentence was clearly convicted before the effective date, Act 649 is inapplicable. Accordingly, after careful consideration of the administrative record, and having considered the applicable law and rules, for reasons hereinabove stated, we agree with the trial court's decision to affirm the DPSC's decision to deny relief on the 1983 Ouachita parish sentence. Costs are assessed against the appellant.

AFFIRMED.