

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 1717

RONNIE WILLIAMS

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, ET AL

Judgment Rendered: APR 26 2013

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 598498

The Honorable Kay Bates, Judge Presiding

Ronnie Williams
St. Gabriel, Louisiana

Plaintiff/Appellant
Pro Se

William L. Kline
Baton Rouge, Louisiana

Counsel for Defendant/Appellee
Department of Public Safety
and Corrections, James M.
LeBlanc, Secretary

BEFORE: GUIDRY, CRAIN, AND THERIOT, JJ.

Guidry, Ft. concurs.
W.L. concurs

THERIOT, J.

Ronnie Williams, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“DPSC”), appeals the judgment of the Nineteenth Judicial District Court, affirming DPSC’s final administrative decision denying the relief Williams requested through an administrative remedy procedure (“ARP”). For the following reasons, we affirm.¹

FACTS AND PROCEDURAL HISTORY

On May 28, 1994, Williams was convicted of armed robbery and attempted first degree murder. He was sentenced to serve twenty-five (25) years at hard labor for attempted first degree murder and fifty (50) years at hard labor for armed robbery, each sentence to run concurrent with one another. His total sentence, before any computation for good time credit, was fifty (50) years at hard labor.

On September 23, 1994, Williams applied for good time relief at the reduction rate of thirty (30) days for every thirty (30) days actually served in custody, pursuant to La. R.S. 15:571.3. The prison warden approved the application on November 9, 1994, and Williams received good time credit from the beginning of his incarceration on February 21, 1993.²

By Acts 2010, No. 649, effective October 15, 2010, the Legislature amended La. R.S. 15:571.3(B)(1) by adding subparagraph (b), to provide:

- (a) Except as provided in Paragraph (B)(2) of this Section, every inmate in the custody of [DPSC] who has been convicted of a felony, except an inmate convicted a second time of a crime of violence as defined by R.S. 14:2(B), and sentenced to

¹ The Commissioner of the 19th JDC noted in his screening recommendation that all of the parties named by Williams as defendants except for DPSC should be dismissed, since only DPSC is a proper party in actions regarding judicial review of ARPs. La. R.S. 15:1177(A)(1)(b). Accordingly, the court dismissed with prejudice all the named defendants except for DPSC.

² Prior to the enactment of Legislative Act 1099 on January 1, 1997, which amended La. R.S. 15:571.3 to require that persons convicted of crimes enumerated under La. R.S. 14:2(B) serve a minimum eighty-five percent of their sentence, persons convicted of violent crimes were eligible for “good time” pursuant to Act 138, which became effective January 1, 1992. Williams’s convictions, which occurred in 1994, therefore are governed by Act 138.

imprisonment for a stated number of years or months, or when the sentencing court has denied or conditioned eligibility for “good time” as provided in R.S. 15:537, may earn, in lieu of incentive wages, a diminution by good behavior... to be known as “good time.”... The secretary shall establish regulations for awarding and recording of good time and shall determine when good time has been earned toward diminution of sentence. The amount of diminution of sentence allowed under the provisions of this Section shall be at the rate of thirty-five days for every thirty days in actual custody.

(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:

(i) A sex crime as defined in R.S. 15:541.

(ii) A crime of violence as defined in R.S. 14:2(B).

(iii) Any offense which would constitute a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, regardless of the date of conviction.

Subparagraph (b) in its entirety was the amendment to La. R.S. 15:571.3 made effective by Act 649.³

Williams made another application to the warden to have his diminution computed in accordance with Act 649, but his application was denied. Williams then filed his first ARP, claiming he was entitled to the new computation under Act 649 since he was convicted after January 1, 1992, and had not been convicted a second time of a crime of violence. The prison denied his ARP, stating that while he was convicted after January 1, 1992, subparagraph (b) also denies good time to those persons convicted of crimes of violence defined under La. R.S. 14:2(B), and both of the convictions for which Williams is serving a sentence are for crimes of violence. Williams filed his second ARP to DPSC, to which the secretary of DPSC responded that since Williams had not been convicted of a second crime of violence,⁴ and since his offenses were committed prior to January 1, 1997, he was eligible for the good time computation under Act 138;

³ The 35 days for 30 days credit computation enacted by Act 649 was later repealed by Act 186 of 2011 and Act 110 of 2012; however, since these Acts are only applicable to persons convicted on or after August 15, 2011, and August 1, 2012, respectively, they have no relevance to the instant appeal.

⁴ Williams had not been convicted of a crime of violence prior to his convictions for armed robbery and attempted first degree murder, which were made to run concurrent with each other.

however, since he was currently serving time for a crime of violence conviction, he was not eligible for the good time computation of Act 649.

Williams applied to the 19th JDC for judicial review. The court's commissioner found that Williams's claim did not take into account the whole of La. R.S. 15:571.3(B), and while (B)(1)(a) declares eligibility for good time at the rate of 35 days for 30 days, (B)(1)(b) provides the exceptions to the beneficiaries of (B)(1)(a). The commissioner found that Williams was ineligible for good time under Act 649, but since he was found eligible for good time under Act 138, he would continue to receive credit at the rate of 30 days for every 30 days served in actual custody. The court adopted the commissioner's recommendation, affirming DPSC's decision. Williams then filed the instant appeal.

STANDARD OF REVIEW

Inmates aggrieved by a decision rendered by DPSC may seek judicial review pursuant to La. R.S. 15:1177. The standard of review is set forth in La. R.S. 15:1177(A)(9), as follows:

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.

Victorian v. Stalder, 1999-2260, p. 5-6 (La. App. 1 Cir. 7/14/00), 770

So.2d 382, 384-385.

DISCUSSION

We agree with the judgment of the trial court, as well as the rulings made by the prison and DPSC on Williams's ARPs. At the time of his conviction, Act 138 was in effect, and he was approved to receive good time accordingly. See *State v. Sugasti*, 2001-3407, p.4 (La. 6/21/02), 820 So.2d 518, 520. Upon the enactment of Act 649, La. R.S. 15:571.3(B)(1)(a) read that every inmate in the custody of DPSC who has been convicted of a felony, except an inmate convicted a second time of a crime of violence as defined by R.S. 14:2(B), *may* earn good time credit at the rate of 35 days for every 30 days served. In his brief, Williams misreads Act 649 as stating that an inmate convicted a second time of a crime of violence *shall* earn good time credit at the rate of 35 days for every 30 days served, but from a plain reading of the Act found in the record, this is not the case. Williams is ineligible under subparagraph (b)(ii), since he is convicted and serving time for not only one but two crimes of violence.

CONCLUSION

When La. 15:571.3(B) is read as a whole, Williams cannot receive good time at the rate of 35 days for every 30 days served. However, since he was approved in 1994 to receive good time at the rate of 30 days of credit for every 30 days actually served when Act 138 made it possible for an inmate of his offender status to do so, he will continue to receive good time credit at that rate.

DECREE

The ruling of the 19th JDC affirming DPSC's decision to deny Williams's ARP is affirmed. All costs in this appeal are assessed to the appellant, Ronnie Williams.

AFFIRMED.