

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1853

DOUGLAS SNEED

VERSUS

STATE OF LOUISIANA

Judgment Rendered: JUN 07 2013

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On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. 603,675

Honorable Todd W. Hernandez, Judge Presiding

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Douglas C. Sneed
Winn Correctional Center
Winnfield, Louisiana

Plaintiff/Appellant
In Proper Person

Jonathan R. Vining
Baton Rouge, Louisiana

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

* * * * *

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

Handwritten signatures:
FMC
Winn
TWH

McCLENDON, J.

Douglas Sneed, an inmate in the custody of the Louisiana Department of Public Safety and Corrections ("DPSC"), seeks review of a district court judgment affirming a final agency decision regarding his sentence computation. For the reasons that follow, we reverse and remand to the district court with instructions.

FACTS AND PROCEDURAL HISTORY

Sneed is currently serving several sentences. Sneed was first convicted and sentenced on June 24, 2009 to five years for violating LSA-R.S. 14:95.1, possession of a firearm by a convicted felon, under Vernon Parish docket number 73888.

Subsequently, on December 22, 2009, Sneed was sentenced in Vernon Parish docket number 75787 to 25 years for armed robbery and twenty-five years for attempted armed robbery, which were to run concurrently. He was also sentenced to 5 years for use of a firearm, which was to run consecutive to the other two sentences for a total of thirty years. Also on December 22, 2009, Sneed was sentenced to 5 years for possessing a controlled dangerous substance under docket number 74842 and fifteen years for illegal possession of a firearm under Vernon Parish docket number 75777. These sentences were to run concurrently with the sentence in docket number 75787, so that Sneed would serve a total of thirty years.

After the DPSC computed the sentences in docket numbers 74842, 75777, and 75787 to run consecutive with the sentence in docket number 73888, or thirty-five years total, Sneed sought administrative review with the DPSC. Sneed contended that the sentence in docket number 73888 was to run concurrently with his sentences in 74842, 75777, and 75787, such that he should be required to serve a thirty-year sentence. His request was denied in the first and second steps. In denying Sneed's request in the second step, the DPSC noted that "[t]here is no transcript attached to your complaint."

Sneed subsequently filed a petition for judicial review with the district court. Attached to his petition for judicial review was a purported transcript from the December 22, 2009 hearing, in which the trial judge states:

On the [conviction under docket number 74842], five years at hard labor with the Louisiana Department of Public Safety and Corrections, with credit for time served since the date of your arrest, concurrent with those other sentences I'm imposing today, and I will impose these sentences concurrent with any other sentence that you may have to serve. I don't know if you – on – if you're going to be revoked on probation or if you're serving another sentence or not, but what this means is, you're going to do 30 years from today. So, I'm running all this concurrent with each other and any other sentence.

The matter was initially referred to a Commissioner,¹ who issued a report and recommended the petition be dismissed, reasoning, in part, as follows:

The [DPSC] is correct that the minutes of the 30th Judicial District Court dated June 24, 2009 and December 22, 2009 clearly show that [the] Court was silent at sentencing on December 22, 2009, as to docket number 73888, and the five year sentence imposed [thereunder] for attempted possession of a firearm by a convicted felon. ... If the sentencing court intended for the sentence under 75787 to run concurrent with the 73888 sentence previously imposed, the Court was required to state that during sentencing in #75787. The Petitioner did not provide any proof in the administrative record to support his claim that the December 2009 court intended that all of his sentences be concurrent, including the one under 73888.

Thereafter, the district court, adopting the reasons set forth in the Commissioner's report, affirmed the DPSC's decision and dismissed Sneed's petition for judicial review.

Sneed has sought review with this court, contending that the district court erred in affirming the DPSC's decision and dismissing his suit.

DISCUSSION

It is well settled that the determination of the sentence a defendant is to serve, and what, if any, conditions are to be imposed on that sentence is made by the trial judge, not the defendant's custodian. The custodian's obligation is to

¹ The offices of commissioner of the 19th Judicial District Court were created by LSA-R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. LSA-R.S. 13:713(A). The district judge "may accept, reject, or modify in whole or in part the findings or recommendations made by the commissioner and also may receive further evidence or recommit the matter to the commissioner with instructions." LSA-R.S. 13:713(C)(5).

see that the sentence imposed is the sentence served. **State ex rel. Pierre v. Maggio**, 445 So.2d 425, 426 (La. 1984).

Sneed contends that the sentencing judge was not silent regarding whether his sentences imposed on December 22, 2009 were to run concurrent with his sentence imposed on June 24, 2009. In the purported transcript of the December 22, 2009 hearing, the sentencing judge stated plainly: "I will impose these sentences concurrent with any other sentence that you may have to serve. ... what this means is, you're going to do 30 years from today. So, I'm running all this concurrent with each other and any other sentence." Sneed concludes that the sentencing judge's intentions reflected in the purported December 22, 2009 transcript were clear that the prior conviction in docket number 73888 was to run concurrently with the convictions in docket numbers 74842, 75777, and 75787.

The purported transcript of the December 22, 2009 hearing, although it was attached to Sneed's petition for judicial review, was not introduced into evidence during the course of the DPSC proceedings. The district court's review of the DPSC's decision is confined to the record. LSA-R.S. 15:1177(A)(5). The district court "may affirm the decision of the agency or remand the case for further proceedings, or order that additional evidence be taken." LSA-R.S. 15:1177(A)(8). The opportunity for parties to present evidence occurs at the administrative level. **Lightfoot v. Stalder**, 00-1120 (La.App. 1 Cir. 6/22/01), 808 So.2d 710, 715, writ denied, 01-2295 (La. 8/30/02), 823 So.2d 957. If the court decides that additional evidence must be taken, such shall be accomplished "upon conditions determined by the court." LSA-R.S. 15:1177(A)(4). A district court exceeds its authority under the Corrections Administrative Procedure Act by expanding the record and allowing evidence to be introduced at the district court level. **Curry v. Cain**, 05-2251 (La.App. 1 Cir. 10/6/06), 944 So.2d 635, 639.

In the interest of justice and in accordance with LSA-R.S. 15:1177(A)(8), we thus remand this matter to the district court to order that additional evidence, including, but not limited to, the actual transcript of the December 22,

2009 hearing,² be taken and considered by the DPSC. If Sneed is not satisfied with the DPSC's response, he may again seek judicial review.

CONCLUSION

The district court's judgment affirming the DPSC's decision and dismissing Sneed's suit with prejudice is reversed. This matter is remanded to the district court with instructions to remand the case for further proceedings in order that additional evidence may be taken in accordance with LSA-R.S. 15:1177(A)(8). Costs of this appeal in the amount of \$957.50 are assessed equally between the DPSC and Sneed.

REVERSED AND REMANDED WITH INSTRUCTIONS.

² Sneed also attempted to introduce a copy of a "sentence clarification" with the district court. However, the district court noted that it could not consider same insofar as it was not part of the administrative record.