

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 0324


ROY MURPHY

VERSUS

JAMES LEBLANC, SECRETARY DEPARTMENT  
OF CORRECTIONS

Judgment Rendered: NOV 01 2013

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On Appeal from  
19<sup>th</sup> Judicial District Court,  
In and for East Baton Rouge Parish,  
State of Louisiana  
Trial Court No. 613,269

  
The Honorable William Morvant, Judge Presiding

\* \* \* \* \*

Roy Murphy  
Winnfield, Louisiana

Plaintiff/Appellant,  
In Proper Person

William Kline  
Baton Rouge, Louisiana

Attorney for Defendant/Appellee,  
Louisiana Department of Corrections

\* \* \* \* \*

BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

**CRAIN, J.**

Roy Murphy appeals the judgment of the district court dismissing his petition for judicial review in which he requested issuance of a writ of habeas corpus. Murphy contends that he was convicted of aggravated rape, a violation of Louisiana Revised Statute 14:42, and was sentenced to fifty years imprisonment with the Department of Public Safety and Corrections. Murphy alleges that his continued custody is illegal because he was charged by bill of information, rather than indictment, and because the Sheriff of the parish in which he was convicted did not tender appropriate paperwork to the Department as required by Louisiana Code of Criminal Procedure article 892, the failure of which amounts to the Department having refused custody of him.

The district court dismissed Murphy's suit without service for failure to state a cause of action for release or damages, and for raising the damage claim in the wrong venue and proceeding. The court adopted the written recommendation of the court's commissioner, who noted that numerous complaints had been filed by inmates claiming that because they were charged by bill of information, the Sheriffs in the parishes of their convictions failed to tender the Department with a grand jury indictment as required by Article 892, meaning that the Department's current custody is illegal.

The same substantive issue was recently considered by this court in *Lewis v. Secretary, Louisiana State Dept. of Public Safety and Corrections*, 12-1890, 2013WL2488464 (La. App. 1 Cir. 6/7/13) (unpublished), wherein this court found:

Article 892 requires that the sheriff transmit certain documents to the Department upon delivery of a prisoner, including a "copy of the indictment under which the defendant was convicted." Appellant alleged that his commitment papers were deficient because they included only a bill of information, rather than an indictment. This argument lacks merit because, under [Louisiana Code of Criminal Procedure article] 934(6), the term "indictment" by definition includes a bill of information, unless there is a clear intent to restrict the term to the finding of a grand *jury*, which is clearly not the case in Article

892. Moreover, even if proper documentation had not been prepared and delivered to the Department in accordance with Article 892, such failure would not affect the validity of appellant's convictions or sentences, which constitute the legal authority for the Department's custody. *See* La.C.Cr.P. art. 892(D); *Roland v. Stalder*, 10-0957, p. 3 (La.App. 1st Cir.3/25/11) (unpublished). . . . Appellant failed to establish his claim that he has never been accepted into the Department's custody.

For the same reasons, we find no merit to Murphy's claims and affirm the judgment of the district court that dismissed Murphy's demands at his cost.

The district court additionally assessed Murphy with a strike pursuant to the Prison Litigation Reform Act. *See* La. R.S. 15:1187. However, the assessment of a strike is a sanction applicable only in suits in which an inmate challenges prison conditions or officials' actions affecting the lives of those confined in prison. *Manuel v. Stalder*, 04-1920 (La. App. 1 Cir. 12/22/05), 928 So. 2d 24, 27-28; *Frederick v. Ieyoub*, 99-0616 (La. App. 1 Cir. 5/12/00), 762 So. 2d 144, 150, *writ denied*, 00-1811 (La. 4/12/01), 789 So. 2d 581. Since Murphy's suit does not fall into that category, the district court erred in assessing a strike against him.

For the foregoing reason, the September 6, 2012 judgment of the district court dismissing Murphy's petition for judicial review is affirmed. That portion of the district court's judgment assessing a strike against Murphy is reversed. This memorandum opinion is issued in compliance with Uniform Rules – Courts of Appeal Rule 2-16.1B. All costs of this appeal are assessed to Roy Murphy.

**AFFIRMED IN PART; REVERSED IN PART.**