

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 CA 0609

JAMIE HAWTHORNE

VERSUS

LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: DEC 22 2016

\* \* \* \* \*

On Appeal from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
No. 630,549

The Honorable Donald R. Johnson, Judge Presiding

\* \* \* \* \*

Jamie Hawthorne  
Rayburn Correctional Center  
Angie, Louisiana

Appellant/Pro Se

Debra A. Rutledge  
Baton Rouge, Louisiana

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

\* \* \* \* \*

BEFORE: PETTIGREW, McDONALD AND CALLOWAY<sup>1</sup>, JJ.

---

<sup>1</sup> Hon. Curtis Calloway, retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

**CALLOWAY, J.**

Appellant, Jamie Hawthorne, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department), housed at Rayburn Correctional Center (Rayburn Correctional) in Angie, Louisiana, appeals a judgment of the district court that dismissed his petition for judicial review without prejudice. Based on our review of the record, we affirm the district court's judgment.

**FACTS AND PROCEDURAL HISTORY**

On May 15, 2014, Mr. Hawthorne filed a petition for judicial review in the Nineteenth Judicial District Court (19th JDC) seeking review of Administrative Remedy Procedure (ARP) No. RCC-2013-355. In RCC-2013-355, he claimed that after a sick call on June 11, 2013, Dr. Casey McVea discontinued his seizure medications and restrictive duty status. RCC-2013-355 was dated June 12, 2013. On December 13, 2013, after an investigation, Rayburn Correctional rejected the ARP filed by Hawthorne. At the second step, Mr. Hawthorne's request was again denied, as it was deemed that he had received adequate medical care.

After the rejection of his claim, Mr. Hawthorne filed a Petition for Judicial Review with the 19th JDC claiming that he had been taken off his seizure medication and that his duty status had been changed from "restricted" to "regular." Mr. Hawthorne also sought damages. Mr. Hawthorne requested to see an outside doctor and to be transferred to Hunt Correctional, where he had been previously housed. The Department answered the prisoner suit and denied that Mr. Hawthorne had received inadequate medical care. Mr. Hawthorne filed a brief in the district court pursuant to court order and La. R.S. 15:1177(A)(6), which permits issues that may be satisfactorily and fairly determined upon argument to be

submitted in brief in lieu of oral argument. However, a hearing was conducted in the 19th JDC, and Mr. Hawthorne was permitted oral argument.

The 19th JDC Commissioner<sup>2</sup> (Commissioner) issued a recommendation pursuant to La. R.S. 15:1177(A)(5) and (9) denying the relief sought by Mr. Hawthorne and dismissing his suit. The district court adopted the recommendation of the Commissioner after a *de novo* review of the record. It is from this judgment that Mr. Hawthorne appeals.

### DISCUSSION

Hawkins filed a petition for judicial review of an ARP in accordance with Corrections Administrative Remedy Procedure (CARP), La. R.S. 15:1171, *et seq.* with the 19th JDC. The Department answered the petition for judicial review and denied that Mr. Hawthorne had received inadequate medical care. Louisiana Revised Statute 15:1177(A)(9) sets forth the appropriate standard of review by the district court, which functions as an appellate court when reviewing the Department's administrative decisions. A review is mandated to be conducted by the district court without a jury and must be confined to the record. La. R.S. 15:1177(A)(5). Specifically, the court may reverse or modify the administrative decision only if substantial rights of the appellant have been prejudiced because the administrative findings are: (1) in violation of constitutional or statutory provisions, (2) in excess of the statutory authority of the agency, (3) made upon unlawful procedure, (4) affected by other error of law, (5) arbitrary, capricious or characterized by an abuse of discretion, or (6) manifestly erroneous in view of the

---

<sup>2</sup> The office of commissioner of the 19th JDC was created by La. R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. La. R.S. 13:713(A). The commissioner's written findings and recommendations are submitted to a district court judge, who may accept, reject, or modify them. La. R.S. 13:713(C)(5); *see Martinez v. Tanner*, 11-0692 (La. App. 1 Cir. 11/9/11), 79 So. 3d 1082, 1084 n.3, *writ denied*, 11-2732 (La. 7/27/12), 93 So. 3d 597.

reliable, probative and substantial evidence on the whole record. La. R.S. 15:1177(A)(9); *Lightfoot v. Stalder*, 00-1120 (La. App. 1 Cir. 6/22/01), 808 So. 2d 710, 715-16, *writ denied*, 01-2295 (La. 8/30/02), 823 So. 2d 957.

On review of the district court's judgment under La. R.S. 15:1177, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. *McCoy v. Stalder*, 99-1747 (La. App. 1 Cir. 9/22/00), 770 So. 2d 447, 450-51.

Mr. Hawthorne filed a motion in this court requesting that the 19th JDC produce all of his medical records. We granted the motion and ordered the 19th JDC, Parish of East Baton Rouge Clerk's office (Clerk) produce all medical records for Mr. Hawthorne to this court on or before October 26, 2016. The Clerk responded by written correspondence that all of the medical records of Mr. Hawthorne that were in its possession were produced in the record of this court. Therefore, the Clerk is not in possession of any other medical records of Mr. Hawthorne.

At the outset, we note that Mr. Hawthorne filed a document in this appeal entitled "Application for Supervisory Writs" that only pertains to his request for medical records. Mr. Hawthorne has not complied with Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4. He does not specifically assign any errors and offers no argument as to the merits of this matter. However, out of an interest of justice since Mr. Hawthorne is a pro se inmate, we will address the issues he raised in his petition for judicial review filed in the 19th JDC. *See* La. C.C.P. art. 2164.

As noted during the investigation of this complaint, Mr. Hawthorne was seen by Dr. McVea on June 11, 2013, for a follow up visit from April 16, 2013. At that

time, Dr. McVea discontinued the seizure medication. On June 16, 2013, Mr. Hawthorne returned claiming that he was feeling shaky since being off the seizure medication. He had a normal exam and was told to follow up if problems occurred. Mr. Hawthorne was seen numerous other times for various other problems beginning June 21, 2013.

He again requested to be put back on seizure medication on July 15, 2013. On July 17, 2013, he returned and claimed that he had seizure activity, but no such activity was noted. On this visit he was diagnosed with possible heat exhaustion. On August 17, 2013, Mr. Hawthorne again complained about being taken off his seizure medication and the change of his duty status, which now allowed him to work in the field.

During the investigation of his complaints, Rayburn Correctional noted that the only possible seizure activity was October 6 and November 17, 2013, and that Mr. Hawthorne was receiving adequate medical care. This court also notes that after the second step denial dated February 7, 2014, Mr. Hawthorne was seen on September 22 and September 28, 2014, complaining of possible seizures. However, consistent with the complaints made on October 6 and November 17, 2013, there does not appear from the record to have been any other medical activity other than his complaints of possible seizures.

As noted by the Commissioner:

the prison administration has made reasonable efforts to accommodate the Petitioner's medical condition in that they continue to treat him [sic] as appropriate for the condition. There is no evidence in the record to indicate that the Petitioner has suffered any lasting physical effects of the disorder based on the treatment that he has received.

The standard of care imposed upon the Department in providing for the medical needs of inmates is that those services be reasonable. *Robinson v. Stalder*, 98-558 (La. App. 1 Cir. 4/1/99), 734 So. 2d 810, 812; *Elsev v. Sheriff of Par. of E.*

*Baton Rouge*, 435 So. 2d 1104, 1106 (La. App. 1st Cir.), writ denied, 440 So. 2d 762 (La. 1983) (citing *Brown v. State*, 392 So. 2d 113, 115 (La. App. 1 Cir. 1980); *Moreau v. State, Department of Corrections*, 333 So. 2d 281, 284 (La. App. 1 Cir. 1976); *Dancer v. Department of Corrections*, 282 So.2d 730, 731 (La. App. 1 Cir. 1973)).

Based upon our review of the administrative record and pursuant to La. R.S. 15:1177(A)(9), we find no error in the district court's judgment concluding that the Department's decision was neither arbitrary, capricious, manifestly erroneous, or in violation of Mr. Hawthorne's constitutional or statutory rights and, thus dismissing his suit. We agree with the Commissioner that the Department's actions in monitoring Mr. Hawthorne was reasonable medical care. There is no evidence in the record that the treatment provided to Mr. Hawthorne has been unreasonable or resulted in any additional injury to him. Mr. Hawthorne has failed to show that he has not received regular examinations and treatment for his complaints or that any examination by the medical staff was improper. Mr. Hawthorne continues to be monitored for his medical condition and receive ongoing medical treatment for the condition from which he suffers. Based upon our review of the record, we find that these conclusions are supported by the medical records contained in the administrative record.

We also address Mr. Hawthorne's request to be transferred to Hunt Correctional Center, "where [he] could be put back on the right [meds]." We agree with the Commissioner that "no inmate has a right, constitutional or statutory, to require the Department to place him in any particular facility." There is no due process right to restrain (and conversely to force a prison transfer), as the due process clause does not protect a duly convicted prisoner against transfer from one institution to another within the state prison system. *Meachum v. Fano*, 427 U.S.

215, 225, 96 S.Ct. 2532, 2538, 49 L.Ed.2d 451 (1976); *Montanye v. Haymes*, 427 U.S. 236, 243, 96 S.Ct. 2543, 2547, 49 L.Ed.2d 466 (1976).

We find no error of law in the Department's conclusion that Mr. Hawthorne is receiving appropriate medical care. We also find that Mr. Hawthorne has no constitutional or statutory right to be transferred to a particular facility of his choosing. Therefore, we affirm the district court's dismissal of his petition for judicial review without prejudice. La R.S. 15:1177(A)(9)(a).

Mr. Hawthorne also requested damages and pain and suffering in his petition for judicial review filed with the district court. These claims made by Mr. Hawthorne are tort claims. Louisiana Revised Statute 15:1171 authorizes the Department or the sheriff to adopt, for the particular correctional institution, an administrative remedy procedure for receiving, hearing, and disposing of complaints and grievances by an "offender,"<sup>3</sup> which arise while the offender is in custody. The administrative remedy procedure is the formal grievance mechanism that all offenders committed to the custody of the DPSC must use before they may proceed with a suit in federal or state court. LAC 22:I.325(D)(1). As originally enacted, La. R.S. 15:1171 encompassed "complaints and grievances," without any reference to tort actions. *Pope v. State*, 99-2559 (La. 6/29/01), 792 So. 2d 713, 715-16.

Delictual actions for injury or damages shall be filed separately as original civil actions. La. R.S. 15:1177(C). In response to the *Pope* decision, the Louisiana Legislature in 2002 amended La. R.S. 15:1177(A) to exclude tort claims from judicial review. *See* La. Acts, 1<sup>st</sup> Ex. Sess., No. 89, § 2, effective April 18, 2002.

---

<sup>3</sup> An "offender" means an adult or juvenile offender who is in the physical or legal custody of the DPSC, a contractor operating a private prison facility, or a sheriff when the basis for the complaint or grievance arises. Any subsequent event, including posttrial judicial action or release from custody, shall not affect status as an "offender" for the purposes of this Part. La. R.S. 15:1174(2).

In amending the statute, however, the Legislature created a specific administrative remedy procedure for prisoner tort claims and reserved the right of a prisoner to file a tort suit in district courts for *de novo* review after he first exhausted the administrative remedy procedure for tort claims set forth in CARP.<sup>4</sup> La. R.S. 15:1172.

Once an offender exhausts the administrative procedure pursuant to CARP, he may file a civil suit in district court pursuant to the Louisiana Prison Litigation Reform Act, La. R.S. 15:1181, *et seq.* Louisiana Revised Statute 15:1181(2) defines a “civil action with respect to prison conditions” or a “prisoner suit” as:

[A]ny civil proceeding with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include post conviction relief or habeas corpus proceedings challenging the fact or duration of confinement in prison.

Furthermore, La. R.S. 15:1184(F) states that:

The exclusive venue for **delictual actions** for injury or damages shall be the parish where the prison is situated to which the prisoner was assigned when the cause of action arose. Upon consent of all parties, the court may transfer the suit to a parish in which venue would otherwise be proper. [Emphasis added].

It is only after an administrative decision regarding a delictual action is rendered that the prisoner has the right to file the prisoner’s claim as *an original civil action* in the appropriate district court. *Jackson v. State*, 2011-1716 (La. App. 1 Cir. 3/23/12), 92 So. 3d 391, 396, *writ granted, matter remanded for hearing*, 2012-0912 (La. 6/22/12), 90 So.3d 1069.

There is no indication in the record that Mr. Hawthorne has followed the CARP procedure for his tort claims. He made no claim for damages in his original

---

<sup>4</sup> Pursuant to the 2002 amendments to La. R.S. 15:1172 and 1177 (2002 La. Acts, 1<sup>st</sup> Ex. Sess., No. 89, § 2, effective April 18, 2002), the district courts do not function as courts of review (limited to a review of the CARP record), but as courts of original jurisdiction. However, this does not relieve the prisoner of filing an administrative claim (via CARP) pursuant to La. R.S. 15:1172. See *Dickens v. Louisiana Correctional Institute for Women*, 2011-0176 (La. App. 1 Cir. 9/14/11), 77 So. 3d 70, 73 n.1.



ARP. The first claim for damages by Mr. Hawthorne is in this appeal. In general, appellate courts will not consider issues raised for the first time on appeal. *Jackson v. Home Depot, Inc.*, 2004-1653 (La. App. 1 Cir. 6/10/05), 906 So. 2d 721, 725. Further, La. R.S. 15:1177(A)(5) specifically limits judicial review of Department administrative decisions to “the issues presented in the petition for review and the administrative remedy request filed at the agency level.” Accordingly, these claims are in violation of La. R.S. 15:1177(A)(5), not properly before this court, and cannot be raised for the first time on appeal. *See Lewis v. Stalder*, 2010-0143, p. 1 (La. App. 1 Cir. 6/11/10) (unpublished). Therefore, Mr. Hawthorne’s tort claims are not properly before this court and we cannot address them.

### **CONCLUSION**

For the above and foregoing reasons, we conclude that the district court did not abuse its discretion in affirming the Department’s decision to reject the claims of Jamie Hawthorne. All costs of this appeal are assessed to Jamie Hawthorne.

**AFFIRMED.**