

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CA 0594

RONALD J. NAQUIN

VERSUS

JAMES LEBLANC, SEC. OF THE DEPARTMENT OF PUBLIC SAFETY &  
CORRECTIONS

Judgment rendered NOV 02 2018

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Appealed from the  
19<sup>th</sup> Judicial District Court  
In and for the Parish of East Baton Rouge, State of Louisiana  
Trial Court No. C654036  
Honorable Todd Hernandez, Judge

\*\*\*\*\*

RONALD NAQUIN  
JACKSON, LA

PRO SE  
PLAINTIFF-APPELLEE  
RONALD NAQUIN

HEATHER HOOD  
BATON ROUGE, LA

ATTORNEY FOR  
DEFENDANT-APPELLANT  
LOUISIANA DEPARTMENT OF PUBLIC  
SAFETY & CORRECTIONS

\*\*\*\*\*

**BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.**

**PETTIGREW, J.**

Defendant, the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment of the district court, which reversed an earlier final decision of DPSC in an administrative proceeding, wherein inmate Ronald Naquin challenged DPSC's denial of his request for administrative relief regarding the calculation of good time credits. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

According to the record, Naquin was charged with aggravated incest (count one) and oral sexual battery (count two). The bill of information states that the dates of Naquin's offenses were "on or between September 8, 1994 and September 7, 2000." On June 2, 2014, Naquin pled guilty to both counts and was sentenced, pursuant to the 1994 sentencing guidelines, to 17 years at hard labor on count one and 15 years at hard labor on count two, to run concurrently.

In 2016, Naquin initiated ARP No. DCI-2016-669, wherein he argued that DPSC had not complied with the 1994 sentencing guidelines in determining his good time eligibility. Naquin requested that he be placed under the 1994 good time act, former La. R.S. 15:571.3, as amended by 1991 La. Acts, No. 138, § 1 (Act 138), and that his Master Prison Record be amended to reflect 30 days of good time for every 30 days served.<sup>1</sup> DPSC reviewed Naquin's ARP according to the procedures provided by law and denied his request for relief at each step. In the First Step Response Form, Naquin received the following explanation from DPSC:

A review of your time computation has been conducted. According to the bill of information, your crimes of conviction, Aggravated Incest and Sexual Battery[,] were committed between the dates of September 8, 1994-September 7, 2000.

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<sup>1</sup> The computation of "good time" credits is set out in La. R.S. 15:571.3, which has been amended numerous times since its enactment. One of those amendments, Act 138, provided that prisoners could earn diminution of sentence, to be known as "good time," at a rate of thirty days of good time for each thirty days served in actual custody.

In accordance with Department Regulation B-04-001,<sup>[2]</sup> you are not eligible to earn [good time] since you were convicted of an enumerated sex offense and your crime was committed after 08/15/1999. Your Request for Administrative Remedy is denied.

Naquin then filed his petition for judicial review in the Nineteenth Judicial District Court (19th JDC); it was assigned to a commissioner for evaluation and to make a recommendation to the district court judge.<sup>3</sup> DPSC filed a response to his petition and attached the entire administrative record.

After reviewing the administrative record and the applicable law, the commissioner found that because Naquin was sentenced pursuant to the 1994 sentencing provisions, which would not deny Naquin good time, DPSC's decision to deny him good time eligibility under the law and facts of the case was incorrect. The commissioner issued a recommendation that DPSC's decision be reversed, that DPSC recalculate Naquin's time in accordance with the 1994 sentencing provisions, and that DPSC provide a new Master Prison Record within 30 days showing said calculations. On January 22, 2018, after a *de novo* review of the record and the commissioner's recommendation, the district court judge signed a judgment incorporating the commissioner's recommendation. DPSC then filed the instant appeal, assigning the following as error: "The district court committed a clear error of law in reversing the agency decision without a finding that said agency decision was manifestly erroneous or clearly wrong."

### **STANDARD OF REVIEW**

The district court may reverse or modify the administrative decision only if substantial rights of the appellant have been prejudiced because the administrative

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<sup>2</sup> According to the record, DPSC Regulation B-04-001(E) provides as follows with regard to certain offenders and the denial of good time eligibility:

The offender was sentenced to the Department for a sex offense, as defined in La. R.S. 15:537(A), committed on or after August 15, 1999. (Act 1209 of the 1999 Regular Session) or a sex offense as defined in La. R.S. 15:571.3(B)(3) (See Attachment C "List of Sex Offenses for the Purpose of Denying Good Time" for additional information).

<sup>3</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. 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).

findings, inferences, conclusions, or decisions 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 or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (6) manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. La. R.S. 15:1177(A)(9). 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. **Owens v. Stalder**, 2006-1120 (La. App. 1 Cir. 6/8/07), 965 So.2d 886, 888.

### **ANALYSIS**

Naquin's original complaint centered on the legislation controlling the computation of his good time credit. Naquin acknowledged that at the time he entered his plea, former La. R.S. 15:537, as amended by 1999 La. Acts, No. 1209, § 1 (effective August 15, 1999) (Act 1209), prohibited sex offenders from receiving good time. Nonetheless, Naquin argued that because he was sentenced pursuant to the 1994 sentencing guidelines, he was eligible to earn good time at a rate of 30 days for every 30 days in custody pursuant to Act 138.

On appeal, DPSC argues that because Naquin's criminal actions were committed after the effective date of Act 1209, he is not entitled to good time. DPSC notes that although the sentencing transcript references that Naquin was being sentenced under the law as it existed in 1994, the bill of information was never amended to reflect that these acts only occurred through 1994 or 1999 when the statute was amended. DPSC cites to the case of **Buford v. LeBlanc**, 2015-0765 (La. App. 1 Cir. 12/23/15), 186 So.3d 173, as support for its argument on this issue.

In **Buford**, Gwendolyn Buford was sentenced to 30 years at hard labor for aggravated rape for offenses that ranged "from 1990 until the summer of 1999." Buford sought judicial review of DPSC's decision denying her relief concerning the recalculation of good time credit on her sentence. Buford, who had been receiving good time credit at a

rate of 3 days for every 17 in custody (pursuant to 1995 La. Acts, No. 1099, which amended La. R.S. 15:571.3), argued that she should receive good time in accordance with Act 138 (30 days for 30 days). **Buford**, 186 So.3d at 174. Citing **Massey v. Louisiana Dept. of Pub. Safety and Corr.**, 2013-2789 (La. 10/15/14), 149 So.3d 780, 783, this court noted that the Louisiana Supreme Court has consistently held that the law in effect at the time of the commission of the offense is determinative of the penalty which the convicted accused must suffer, and decided the crux of the case was whether Buford was eligible to earn good time credit under the law in effect at the time she committed the crime. **Buford**, 186 So.3d at 177. The **Buford** court concluded that because Buford's actions were committed both before and after the January 1, 1997 effective date of Act 1099 and the grand jury indictment did not separate or specifically list the dates of Buford's criminal activity, the computation of Buford's good time credit by DPSC in accordance with Act 1099 was correct. *Id.* at 179.

We find the facts of the case before us easily distinguishable from **Buford**. Unlike **Buford**, there is more in the record regarding the actual date of Naquin's offenses. In the instant case, Naquin submitted the June 2, 2014 guilty plea/sentencing transcript that reveals the district court's clear intent to sentence Naquin pursuant to the law as it existed in 1994. When discussing the sentencing range for each charged offense with Naquin, the district court judge made references to "back in 1994" and further noted, "which the Court is bound to abide by for sentencing." Moreover, at the beginning of the June 2, 2014 hearing, there was discussion about the pending charges and what sentences were going to be imposed for each. During the discussion, the court inquired, "The [offense]<sup>4</sup> date is '94, right?" To which counsel for the State replied, "'94, right." Furthermore, in response to Naquin's motion to amend his bill of information, the trial court signed an order on January 5, 2017, stating as follows:

The defendant was charged in a bill of information with committing the crimes of aggravated incest and oral sexual battery from the dates of

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<sup>4</sup> We note that the transcript actually reads "defense date" rather than "offense date." However, as the context of the discussion therein clearly suggests, "defense" was certainly a typographical error by the court reporter.

September 8, 1994 to September 7, 2000. He pled guilty to both charges on June 2, 2014 and was sentenced the same date.

At the time of his guilty plea, the court stated that sentencing law as it existed in 1994 would be applied. ... There is no question that the court imposed the prison terms established for the offenses under the law as it existed in 1994.

We are satisfied that Naquin, having been sentenced pursuant to the 1994 sentencing guidelines, was eligible for good time credits as set forth in Act 138, *i.e.*, 30 days for 30 days.

### **CONCLUSION**

After a thorough review of the record, in consideration of DPSC's arguments on appeal, and applying the relevant law and jurisprudence, the January 22, 2018 judgment of the district court on judicial review is affirmed. Appeal costs in the amount of \$822.00 are assessed against the Louisiana Department of Public Safety and Corrections.

**AFFIRMED.**