

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2021 CA 0576

ALBERT V. ROBERTSON

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY &
CORRECTIONS

DATE OF JUDGMENT: **DEC 22 2021**

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER C696883, SECTION 24, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE DONALD R. JOHNSON, JUDGE

* * * * *

Albert V. Robertson
Jackson, Louisiana

Plaintiff-Appellant
Albert V. Robertson - In Proper Person

Heather C. Hood
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
Louisiana Department of Public Safety
& Corrections

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BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

Disposition: AFFIRMED.

CHUTZ, J.

Plaintiff-appellant, Albert Robertson, an inmate housed in the Dixon Correctional Institute (DCI), appeals the district court's judgment, dismissing his petition for judicial review of the actions of defendants-appellees, James LeBlanc, Secretary of the Department of Public Safety and Corrections, DCI Warden Jason Kent, and DCI employees Ivy Miller and Ashley Sagely (collectively DPSC), initiated as Administrative Remedy Procedure (ARP) #2020-346, based on a finding of lack of subject matter jurisdiction due to Robertson's failure to exhaust administrative remedies. For the following reasons, we affirm.

Robertson filed this petition for judicial review on June 5, 2020, identifying ARP #2020-346 as the basis for his grievance.¹ In his petition for judicial review, Robertson raised several complaints. First, he averred that he was denied parole because DCI refused to update his risk assessment data. He claimed that when he appeared before the parole board on February 11, 2020, the board was informed only of his completion of three DCI Mental Health Programs although he has completed fourteen. Robertson also contended that while a court ordered that he be admitted into a re-entry program, the DCI warden failed to transfer him. Robertson's final allegations were that DCI employee Miller refused to provide

¹ According to the DCI offender's relief request form, issued on April 22, 2020 by the warden's designee, rejecting the grievance, Robertson initiated ARP #2020-346 based on an incident dated April 17, 2020. Although numerous requests for administrative remedy appear in the record, there is none with an incident date of April 17, 2020. In addition to the many ARPs contained in the record, multiple forms for informal correspondence to staff filed out by Robertson were included, many of which were undated and several showed dates subsequent to the April 17, 2020 incident date of ARP #2020-346. These were directed to an attorney, "Mr. Cameron"; DPSC Secretary Leblanc, Warden Kent, Warden Day, Mr. Miller of "Classification," Mr. Thurman of "Mental Health," Mrs. Travis of "Classification," Director Ms. Emily Perrett of "Pre-Release/Re-entry," and Mrs. Deter/Cain of "Mailroom." Additionally, a letter from Robertson addressed to "Pardon & Parole Board," dated February 22, 2020, is contained in the record. As petitioner, Robertson bears the burden of proving the basis of his grievance including the date of the incident. See *Roland v. Stalder*, 2010-0957 (La. App. 1st Cir. 3/25/11), 2011 WL 1102843, at *3 (unpublished opinion). Importantly, in his petition for judicial review, Robertson does not challenge the accuracy of April 17, 2020 as the date of the incident forming the basis of ARP #2020-346. Thus, based on the contents of the record before us, we presume that April 17, 2020 was the date of the incident for ARP #2020-346.

him – and all other DCI inmates – with a copy of their Annual Assessment Sheet, which was last updated in 2013-2014.

The district court commissioner rejected Robertson’s claim, finding that he had failed to exhaust administrative remedies. The district court judge agreed and subsequently signed a screening judgment, dismissing Robertson’s petition for judicial review of ARP #2020-346 for lack of subject matter jurisdiction. This appeal followed.

The rules and procedures governing the ARP process are set forth in Section 325 of Title 22, Part I of the Administrative Code. Once an offender initiates the formal ARP process, see LAC 22:I.325.G, the grievance is screened before assignment of the first step in the two-step ARP process. See LAC 22:I.325.I. See also LAC 22:I.325.J (setting forth the procedure of the two-step grievance process). An offender’s request for an administrative remedy can be rejected during the screening process only for enumerated reasons, and the offender must be notified in writing of the specific reason for rejection. See LAC 22:I.325.I.1.c.i & ii. Among the specifically enumerated reasons for rejection of an ARP prior to assignment to the first step is that “[t]he offender has requested a remedy for more than one incident (a multiple complaint) unless the request is a report of an allegation of sexual abuse.” LAC 22:I.325.I.1.c.i.g.

Robertson’s relief request form from DCI stated that ARP #2020-346 had been rejected because it raised “MULTIPLE ISSUES & MULTIPLE DEPARTMENTS.” The commissioner’s written reasons implicitly concluded that DCI’s rejection of Robertson’s ARP was because it constituted a multiple complaint which was not a report of an allegation of sexual abuse in accordance with LAC 22:I.325.I.1.c.i.g. Inasmuch as Robertson’s petition for judicial review sets forth three distinct bases challenging the dismissal of his ARP, we agree that

he has set forth a multiple complaint and, therefore, that DPSC did not err in its rejection of ARP #2020-346.

The ARP process must be exhausted before an offender may proceed with a suit in state court. *Guy v. Calvit*, 2019-1675 (La. App. 1st Cir. 8/5/20), 311 So.3d 362, 366. Under LAC 22:I.325.I.1.c.iv, an offender has not properly exhausted administrative remedies if his request is rejected for any of the reasons set forth in LAC 22:I.325.I.1.c.i. If an offender fails to exhaust available administrative remedies, the district court and the appellate court lack subject matter jurisdiction to review the claim. *Guy*, 311 So.3d at 366.

Because his ARP was correctly rejected, Robertson failed to exhaust administrative remedies. Accordingly, the district court correctly dismissed Robertson's petition for judicial review for lack of subject matter jurisdiction.

DECREE

For these reasons, we affirm the district court's judgment. Appeal costs are assessed against plaintiff-appellant, Albert Robertson.

AFFIRMED.