

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

DHW

NUMBER 2021 CA 0602

EDWARD STARKS

VERSUS

ahp

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

CHH

Judgment Rendered: DEC 22 2021

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number C699,046

The Honorable Trudy M. White, Judge Presiding

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BEFORE: WHIPPLE, C.J., PENZATO, AND HESTER, JJ.

WHIPPLE, C.J.

This matter is before us on appeal by defendant, the Louisiana Department of Public Safety and Corrections (“the Department”), from a judgment of the district court reversing the Department’s denial of petitioner’s application for parole consideration and granting petitioner’s petition for judicial review. For the reasons that follow, we reverse the judgment of the district court and reinstate the Department’s decision.

FACTS AND PROCEDURAL HISTORY

On September 26, 2001, petitioner, Edward Starks, was tried before a jury in the Criminal District Court for the Parish of Orleans and found guilty of the offense of armed robbery committed on April 30, 2001. A multiple bill was filed pursuant to LSA-R.S. 15:529.1, and Mr. Starks was subsequently adjudicated as a quadruple offender and sentenced to life imprisonment without parole, probation, or suspension of sentence. The predicate offenses listed in the multiple bill were three prior felony convictions in Orleans Parish in docket numbers 369550, 350998, and 306067, which were identified therein as violations of LSA-R.S. 14:67, felony theft over \$500.00. Although docket number 350998 is listed in the multiple bill as theft, the sentencing documents supporting this conviction and the master prison record show that Mr. Starks actually pled guilty to simple burglary, not theft over \$500.00.

On March 19, 2020, Mr. Starks filed an administrative remedy procedure request with the Department (LSP-2020-0795) contending that he was improperly denied parole eligibility under Act 469 of the 2016 Legislative Session, codified as LSA-R.S. 15:574.4(A)(5).¹ Mr. Starks averred that following the enactment of LSA-R.S. 15:574.4(A)(5), he was eligible for parole as he was sentenced to life imprisonment for an offense committed between June 29, 1995, and June 15, 2001.

¹Louisiana Acts 2016, No. 469, Section 1 enacted LSA-R.S. 15:574.4(A)(5) relative to parole, to provide for parole consideration to certain persons.

On April 15, 2020, the Department determined that he was not eligible for parole, where he was sentenced for a third or subsequent felony, which was punishable by twelve years or more, and further had two prior simple burglary convictions in docket numbers 306066 and 350998, which were punishable by twelve years or more. The Department thus denied his request for relief at the first step, concluding that because Mr. Starks had two qualifying prior convictions, along with his instant armed robbery offense, his life sentence was within the legal parameters of the court. For these same reasons, his claims for relief were denied at the second step on July 23, 2020.

In response to the denial of his request for administrative relief, Mr. Starks filed a petition for judicial review in the Nineteenth Judicial District Court on August 21, 2020, requesting that the district court modify the Department's decision and grant him parole eligibility "as required by" LSA-R.S. 15:574.4.² Mr. Starks contended that LSA-R.S. 15:574.4(A)(5) provides that parole is based on the convictions a person is "sentenced for," and thus, the Department could not look beyond his prior theft convictions, which served as predicate offenses for his current habitual offender adjudication and sentence. He contended that accordingly, the Department erred in citing other prior felony convictions in his criminal history as a basis for denying his parole eligibility.

The district court agreed and rendered a judgment on March 29, 2021, granting his petition for judicial review, reversing the Department's decision to deny his parole eligibility, and ordering that the Department grant Mr. Starks parole consideration. The Department now appeals.

²Pursuant to LSA-R.S. 15:1177(A), any offender who is aggrieved by an adverse decision may seek judicial review of the decision only in the Nineteenth Judicial District Court.

DISCUSSION

Louisiana Revised Statute 15:1177(A)(9) provides that a district court may reverse or modify a decision of the Department “only if substantial rights of the appellant have been prejudiced” because the Department’s findings or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (f) manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record.

The Department contends that the district court committed a “clear error of law” in reversing its decision without a finding that the Department’s interpretation of LSA-R.S. 15:574.4 was manifestly erroneous or clearly wrong. The Department further contends that the record is clear that Mr. Starks has been convicted of armed robbery (a crime of violence) and two simple burglaries (punishable by imprisonment for twelve years or more), which renders him ineligible for parole pursuant to LSA-R.S. 15:574.4., and that the district court erred in finding otherwise.

On review of the district court’s judgment under LSA-R.S. 15:1177, an appellate court owes no deference to the district court’s factual findings or legal conclusions, just as the Louisiana Supreme Court owes no deference to an appellate court’s factual findings or legal conclusions. Tarver v. Louisiana Department of Public Safety & Corrections, 2020-1126 (La. App. 1st Cir. 5/12/21), ___ So. 3d ___, ___.

Louisiana Revised Statute 15:574.4(A)(5) provides as follows:

(a) Notwithstanding the provisions of Paragraph (A)(1) or Subsection B of this Section or any other provision of law to the contrary, **a person committed to the Department of Public Safety and Corrections shall be eligible for parole consideration upon serving fifteen years in actual custody if all of the following conditions are met:**

(i) The person was not eligible for parole consideration at an earlier date.

(ii) The person was sentenced to life imprisonment without parole, probation, or suspension of sentence for the instant offense and the instant offense was committed between June 29, 1995, and June 15, 2001.

(iii) The person is eligible for relief under R.S. 15:308, including a person serving a life sentence with or without additional terms of years.

(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to any person who was sentenced for a third or subsequent felony when the third or subsequent felony and two of the prior felonies are any of the following:

(i) A crime of violence pursuant to R.S. 14:2(B).

(ii) A sex offense as defined in R.S. 15:541 when the victim is under the age of eighteen years at the time of the commission of the offense.

(iii) A violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more.

(iv) Any other offense punishable by imprisonment for twelve years or more.

(v) Any combination of the offenses listed in Items (i) through (iv) of this Subparagraph.

(Emphasis added.)

Interpreting LSA-R.S. 15:574.4(A)(5), the district court concluded that the only felony sentences that can serve to preclude parole eligibility pursuant to LSA-R.S. 15:574.4(A)(5)(b), are those that a person is **currently** “sentenced for,” (which, in Mr. Starks’s case, is his current sentence as a quadruple habitual offender and the predicate offenses that served as a basis for same). In reversing the Department’s decision, the district court stated:

Why the [Department] had to look beyond Mr. Starks[’] habitual offender sentence to find another conviction that is not a part of this habitual offender sentence and not related to it in order to have a total of three crimes to disqualify him from parole eligibility, it’s simply not what the – what the statute allows. It, again, directs the [Department] to look only to an applicant’s habitual offender sentence.

We disagree. Pursuant to the plain language of LSA-R.S. 15:574.4, parole eligibility consideration as provided for in LSA-R.S. 15:574.4(A)(5)(a) does “not apply to any person who was sentenced for a third or subsequent felony **when the third or subsequent felony and two of the prior felonies are ... [a]ny other offense punishable by imprisonment for twelve years or more.**” LSA-R.S. 15:574.4(A)(5)(b)(iv). (Emphasis added.) For the purposes of determining parole

eligibility, LSA-R.S. 15:574.4(A)(5) simply does not limit the felony offenses for which parole consideration is statutorily precluded to the predicate offenses in a multiple bill and the adjudication of petitioner as an habitual offender. As this court held in Duret v. Louisiana Department of Public Safety and Corrections, 2016-1214 (La. App. 1st Cir. 4/12/17) (unpublished) 2017 WL 1376567, LSA-R.S. 15:574.4 prohibits parole eligibility to anyone with three or more felony convictions, regardless of whether he was adjudicated as an habitual offender.

As this court has previously recognized, the Department is not bound by the district court's adjudication of an inmate's habitual offender status under LSA-R.S. 15:529.1 when the Department is making its calculations to determine parole eligibility under LSA-R.S. 15:574.4. Riggins v. Kaylo, 2005-1900 (La. App. 1st Cir. 9/15/06), 943 So. 2d 1154, 1156, citing Townley v. Department of Public Safety and Corrections, 96-1940 (La. 11/1/96), 681 So. 2d 951, 953. In the instant case, Mr. Starks's master prison record, which is not disputed by Mr. Starks herein, shows that he had two felony convictions for simple burglary (docket numbers 306066 and 350998), a conviction for theft over \$500.00 (docket number 369550), and a conviction for attempted possession of a firearm by a convicted felon (docket number 380185) prior to the instant felony conviction for armed robbery. Mr. Starks does not argue, nor has he presented any evidence to show, that his master prison record is in error. In determining that Mr. Starks was not eligible for parole, the Department cited and relied upon Mr. Starks's instant armed robbery offense and his two prior simple burglary convictions.

By its very terms, LSA-R.S. 15:574.4(A)(5)(b)(iv) requires the Department to consider "[a]ny other offense punishable by imprisonment for twelve years or more" in determining parole eligibility. Thus, the district court erred in ruling that the only felony offenses that can serve to preclude parole eligibility pursuant to LSA-R.S. 15:574.4(A)(5)(b) are the predicate offenses underlying Mr. Starks's quadruple

habitual offender adjudication and sentence. Accordingly, the district court erred in reversing the Department's decision to deny Mr. Starks parole eligibility and in granting his petition for judicial review.

CONCLUSION

For the above and foregoing reasons, the March 29, 2021 judgment of the district court reversing the decision of the Louisiana Department of Public Safety and Corrections is hereby reversed. The July 23, 2020 decision of the Louisiana Department of Public Safety and Corrections, denying Mr. Sparks's application for parole consideration based upon its determination that he is ineligible for parole, is reinstated. Costs of this appeal are assessed to the appellee, Edward Starks.

DISTRICT COURT JUDGMENT REVERSED; DEPARTMENT'S DECISION DENYING PAROLE ELIGIBILITY REINSTATED.