

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

HAROLD WEST, SR.

VERSUS

CIVIL ACTION

STATE OF LOUISIANA, ET AL

NUMBER 09-564-RET-DLD

ORDER ON MOTION TO VACATE

Before the court is the plaintiff's Motion to Vacate 30 Day Stay Order. Record document number 3.

On November 9, 2009, the Louisiana Department of Corrections was ordered to file with the court a certified copy of the entire record of the administrative proceeding or certification that the plaintiff failed to exhaust his administrative remedies.<sup>1</sup>

Plaintiff moved to vacate the order on the grounds that the provisions of 42 U.S.C. § 1997e is inapplicable because the plaintiff was not incarcerated at the time he filed suit. Plaintiff argued that he was released from custody on September 3, 2008. Plaintiff filed suit on August 1, 2009.

Exhaustion in cases covered by § 1997e(a) is mandatory. *Porter v. Nussle*, 534 U.S. 516, 524, 122 S.Ct. 983, 988 (2002); *Booth v. Churner*, 532 U.S. 731, 739, 121 S.Ct. 1819 (2001). Applicability of the Prison Litigation Reform Act, however, is limited to individuals who are imprisoned at the time the suit is filed. *Janes v. Hernandez*, 215

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<sup>1</sup> Record document number 2.

cc: William Kline

F.3d 541, 543 (5<sup>th</sup> Cir. 2000).

Accordingly,

IT IS ORDERED that the plaintiff's Motion to Vacate 30 Day Stay Order is granted.

IT IS FURTHER ORDERED that a copy of this order shall be mailed to the plaintiff and to **William Kline**, attorney for the Louisiana Department of Corrections, P. O. Box 94304, Baton Rouge, Louisiana 70804-9304.

Signed in Baton Rouge, Louisiana, on November 10, 2009.



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**MAGISTRATE JUDGE DOCIA L. DALBY**