

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2009 CA 1654**

**PAUL JACKSON**

**VERSUS**

**TERRY TERRELL, WARDEN,  
ALLEN CORRECTIONAL CENTER**

*RHP by JMM*  
*JEK. by JMM*

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**On Appeal from the 19th Judicial District Court  
Parish of East Baton Rouge, Louisiana  
Docket No. 565,518, Division "E (23)"  
Honorable William A. Morvant, Judge Presiding**

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**Paul Jackson  
Kinder, LA**

**Plaintiff-Appellant  
In proper person**

**Susan Wall Griffin  
Baton Rouge, LA**

**Attorney for  
Defendant-Appellee  
James LeBlanc, Secretary  
Department of Public  
Safety and Corrections**

**BEFORE: PARRO, KUHN, AND McDONALD, JJ.**

Judgment rendered JUN 04 2010

*McDonald, J. concurs.*

**PARRO, J.**

An inmate in the legal custody of the Department of Public Safety and Corrections (DPSC) appeals a district court judgment dismissing his request for judicial review of a final decision by the DPSC in an administrative remedy procedure. For the following reasons, we affirm.

Paul Jackson (Jackson) was arrested and charged with two felony counts, namely, simple burglary on November 21, 2004, and possession with intent to distribute methamphetamine on November 22, 2004. Following his convictions, Jackson was sentenced to serve a term of imprisonment for seven and ten years, respectively, at hard labor, and he was committed to the legal custody of the DPSC. Prior to serving his sentence at Allen Correctional Center, Jackson was transferred for housing purposes on July 12, 2005, to the jail in Bossier Parish.

During his incarceration at the parish jail, on August 21, 2005, Jackson was charged with a contraband violation and was sanctioned by the DPSC to the forfeiture of 180 days of good time and 10 days in isolation. On October 4, 2005, Jackson was charged a second time with a contraband violation and was sanctioned by the DPSC to the forfeiture of 70 days of good time and 10 days in isolation.

Jackson urged that following his transfer to the parish facility, the local sheriff gained complete authority over him and that he no longer was subject to the rules and regulations of the DPSC. Therefore, he questioned the DPSC's authority to order the forfeiture of good time that he had earned. In support of his assertion, Jackson relies on LSA-R.S. 15:829.

Prior to its amendment by 2006 La. Acts, No. 60, § 1, LSA-R.S. 15:829 provided, in pertinent part:

The director of corrections shall prescribe rules and regulations for the maintenance of good order and discipline **in the facilities and institutions under the jurisdiction of the department**, which rules and regulations shall include

procedures for dealing with violations thereof. A copy of such rules and regulations shall be furnished each inmate. Corporal punishment is prohibited. (Emphasis added).

The preamble of Act 60 stated it was to:

amend and reenact R.S. 15:829, relative to discipline of inmates; to provide that procedures for discipline of inmates in the custody of the Department of Public Safety and Corrections are prescribed by the secretary of the department regardless of where housed; to provide that the secretary maintains a record of infractions which occur in state prisons; and to provide for related matters.

Towards this end, the legislature amended LSA-R.S. 15:829 in part to provide:

A. The secretary of the Department of Public Safety and Corrections shall prescribe rules and regulations for the maintenance of good order and discipline **for inmates sentenced to the legal custody of the department whether housed in local or state facilities**, which rules and regulations shall include procedures for dealing with violations thereof. A copy of such rules and regulations shall be furnished each inmate. Corporal punishment is prohibited. (Emphasis added).

Based on the highlighted change, Jackson urged that while he was in the Bossier Parish facility, only the sheriff of Bossier Parish had the authority to discipline, as well as the authority to award and forfeit good time. In addressing the authority of the sheriff with respect to an inmate in his physical custody, Jackson directed this court to Gullette v. Caldwell Parish Police Jury, 33,440 (La. App. 2nd Cir. 6/21/00), 765 So.2d 464.<sup>1</sup>

In so arguing, Jackson overlooked the statutory provisions authorizing the secretary of the DPSC to establish regulations for awarding and recording of good time and to determine when good time has been earned toward diminution of sentence for inmates in DPSC's legal custody. See LSA-R.S. 15:571.3(B) and 571.4(A). Moreover, the DPSC was directed to adopt rules to govern the imposition of the forfeiture of good time for the causes enumerated

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<sup>1</sup> In Gullette, an inmate in the legal custody of the DPSC, but being held at a parish detention center, who was allegedly injured due to the negligence of the sheriff's employees, failed to establish that the DPSC was under any legal duty to the inmate for purposes of the negligence action. Although the parish detention center received payment of DPSC funds for housing prisoners under its custody and the DPSC performed periodic inspections at the center, the sheriff had complete control and absolute authority over prisoners in his custody, including those who remained in legal custody of the DPSC. This authority included complete responsibility for the discipline and daily physical protection of prisoners. See Gullette, 765 So.2d at 470.

in LSA-R.S. 15:571.4.

Prior to a 2006 amendment, LSA-R.S. 15:571.3(B) provided:<sup>2</sup>

Every inmate in the custody of the department who has been convicted of a felony, except an inmate convicted a second time of a crime of violence as defined by R.S. 14:2(13), and sentenced to imprisonment for a stated number of years or months, or when the sentencing court has denied or conditioned eligibility for "good time" as provided in R.S. 15:537, may earn, in lieu of incentive wages, a diminution of sentence by good behavior and performance of work or self-improvement activities, or both, to be known as "good time". Those inmates serving life sentences will be credited with good time earned which will be applied toward diminution of their sentences at such time as the life sentences might be commuted to a specific number of years. The secretary shall establish regulations for awarding and recording of good time and shall determine when good time has been earned toward diminution of sentence. The amount of diminution of sentence allowed under the provisions of this Section shall be at the rate of thirty days for every thirty days in actual custody except for an inmate convicted a first time of a crime of violence as defined in R.S. 14:2(13), who shall earn diminution of sentence at a rate of three days for every seventeen days in actual custody, including time spent in custody with good behavior prior to sentence for which defendant is given credit.

Concerning the forfeiture of diminution of sentence, prior to its amendment by 2009 La. Acts, No. 17, §1, LSA-R.S. 15:571.4 provided:

A. Determination shall be made by the secretary on a monthly basis as to whether good time has been earned by inmates in the department's custody. Good time which has been earned by inmates in the custody of the Department of Public Safety and Corrections, hereinafter referred to as the "department", shall not be forfeited except as provided in Subsection C of this Section.

B. (1) An inmate who is sentenced to the custody of the Department of Public Safety and Corrections and who commits a simple or aggravated escape, as defined in R.S. 14:110, from any correctional facility, work-release facility or from the lawful custody of any law enforcement officer or officer of the department, or, in the case of an inmate serving a sentence and participating in a work-release program authorized by law, fails to report to or return from his planned employment or other activity under the program may forfeit all good time earned on that portion of his sentence served prior to his escape.

(2) An inmate who has been returned to the custody of the department because of a violation of the terms of parole granted by the Board of Parole shall forfeit all good time earned on that portion of the sentence served prior to the granting of parole.

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<sup>2</sup> See 2006 La. Acts, No. 174, § 1, and No. 572, § 1; see also 2008 La. Acts, No. 30, § 1.

(3) An inmate who is sentenced to the custody of the department and who commits a battery on an employee of the Department of Public Safety and Corrections or any police officer as defined in R.S. 14:34.2 may forfeit good time earned on that portion of the sentence served prior to committing the battery of such person, up to a maximum of one hundred eighty days.

(4) In all other cases, forfeiture of good time may include up to a maximum of one hundred eighty days.

C. The department shall adopt rules to govern the imposition of the forfeiture of good time for the causes enumerated in Subsection B of this Section. The rules shall be adopted in accordance with the Administrative Procedure Act. The rules shall provide that an inmate has the right to a hearing on any charges which are punishable by the forfeiture of good time and that the inmate may waive that right. The rules shall be consistent with and shall implement the provisions of the constitutional, statutory, and jurisprudential requirements which govern the forfeiture of good time. (Footnote omitted).

In his recommendation to the district court, the commissioner observed:

R.S. 15:571.3(A) authorizes a sheriff to award good time to an inmate sentenced to imprisonment without hard labor. R.S. 15:571.3(B) provides that the Department may award good time to inmates in the custody of the Department who have been convicted of a felony. For those inmates sentenced to hard labor, it is the Department who awards good time. R.S. 15:571.4(A) also notes that the Department has the authority to award good time to inmates in the custody of the Department.

After considering the provisions of Sections 571.3 and 571.4, the commissioner found that:

[a] clear reading of the above-cited provisions [together] supports the finding that the Department may award good time to inmates sentenced to the legal custody of the Department, regardless of whether housed in a Department or parish facility.

Finding that LSA-R.S. 15:571.4(B) applies to all inmates sentenced to the legal custody of the DPSC, the commissioner concluded that the DPSC is authorized to take away, or forfeit, good time from those inmates regardless of where they are housed.

We agree with the findings of the commissioner. Although the sheriff of Bossier Parish had physical custody of Jackson, the DPSC retained legal custody of him. By statute, the sheriff is charged with the safekeeping of prisoners in

his jail, including those who are transferred to his jail. See LSA-R.S. 15:704 and 706(C). While a sheriff may exercise control over inmates in his physical custody for the purpose of fulfilling this duty, the DPSC controls who receives and who loses good time credits relative to those inmates sentenced to its legal custody. Accordingly, we recognize the DPSC's statutory authority in this respect as another exception to the sheriff's "absolute authority" over an inmate in his physical custody as recognized by the supreme court in Harper v. State, Dept. of Public Safety and Corrections, 96-0047 (La. 9/5/96), 679 So.2d 1321, 1322-23.<sup>3</sup>

Finding no legal error in the district court's judgment, we affirm that judgment and assess all costs of this appeal to Paul Jackson.

**AFFIRMED.**

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<sup>3</sup> In Harper, the supreme court found that the DPSC was not liable for the physical injury to a state prisoner by another inmate while the state prisoner was in the sheriff's custody. Harper, 679 So.2d at 1324.