

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 2276

MICHAEL PENSON

VERSUS

**ROBERT Y. HENDERSON, WARDEN C. PAUL PHELPS CORRECTIONAL
CENTER AND LOUISIANA BOARD OF PROBATION AND PAROLE**

Judgment Rendered: JUN 11 2010

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On Appeal from the Nineteenth Judicial District Court
In and for the East Baton Rouge
State of Louisiana
Docket No. 575,596

Honorable Janice Clark, Judge Presiding

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Michael Penson
Dequincy, Louisiana

Plaintiff/Appellant
In Proper Person

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BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.

McCLENDON, J.

Michael Penson, an inmate in the custody of the Department of Public Safety and Corrections, appeals the district court's ruling dismissing his petition for review of a parole revocation. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Penson filed a "Petition for Judicial Review" on February 20, 2009, seeking review of a November 13, 2008 decision of the Louisiana Board of Parole (the Board) revoking his parole. Penson alleged that the revocation proceedings were "improperly instituted" and that his due process rights were violated during the revocation proceeding. On May 15, 2009, the Board filed a "Motion to Dismiss" because Penson's petition was not filed within 90 days of the final revocation as required by LSA-R.S. 15:574.11. On September 16, 2009, the district court, in conformity with the Commissioner's recommendation, dismissed the appeal, finding that it had been preempted under LSA-R.S. 15:574.11(D). Penson has filed the instant appeal to seek review of the district court's ruling that dismissed his petition.

DISCUSSION

To properly assert his right to review of the Board's decision, a parolee is required to file a petition for judicial review in district court, alleging that his right to a revocation hearing was denied or the procedural due process protections specifically afforded by LSA-R.S. 15:574.9 in connection with such a hearing were violated. LSA-R.S. 15:574.11(C) and **Leach v. Louisiana Parole Bd.**, 07-0848 (La.App. 1 Cir. 6/6/08), 991 So.2d 1120, 1124, writ denied, 08-2385 (La. 8/12/09), 17 So.3d 378, and writ denied, 08-2001 (La. 12/18/09), 23 So.3d 947. Otherwise, the parolee has no right to an appeal. LSA-R.S. 15:574.11(A).

Louisiana Revised Statutes 15:574.11(D) provides the following delays for appealing to the district court:

Petitions for review that allege a denial of a revocation hearing under the provisions of R.S. 15:574.9 shall be subject to a preemptive period of ninety days after the date of revocation by the Board of Parole. When revocation is based upon the conviction of a new felony while on parole, the ninety-day preemptive period

shall commence on the date of final judgment of the new felony. Petitions for review filed after this peremptive period shall be dismissed with prejudice. Service of process of petitions for review shall be made upon the chairman of the Board of Parole or his designee.

Penson does not claim that his petition for review was timely filed. Rather, he asserts that he was unable to "keep up with time limits" because of inter-facility transfers. Penson also alleges that he was unable to obtain audio recordings from the revocation hearing in order to affirm or dispute the Board's accusations.

We note that the plain language of LSA-R.S. 15:574.11(D) provides that the time period provided therein is peremptive. In **Naghi v. Brener**, 08-2527 (La. 6/26/09), 17 So.2d 919, the Louisiana Supreme Court explained the difference between prescription and peremption as follows:

...Although prescription prevents the enforcement of a right by legal action, it does not terminate the natural obligation (La.C.C. art. 1762(1)); peremption, however, extinguishes or destroys the right (La.C.C. art. 3458). Public policy requires that rights to which peremptive periods attach are to be extinguished after passage of a specified period. Accordingly, nothing may interfere with the running of a peremptive period. It may not be interrupted or suspended; nor is there provision for its renunciation. And exceptions such as *contra non valentum* are not applicable. As an inchoate right, prescription, on the other hand, may be renounced, interrupted, or suspended; and *contra non valentum* applies an exception to the statutory prescription period where in fact and for good cause a plaintiff is unable to exercise his cause when it accrues.

Id., 08-2527 at pp. 6-7, 17 So.3d at 923, citing **Hebert v. Doctors Memorial Hosp.**, 486 So.2d 717, 723 (La.1986). Accordingly, regardless of whether Penson had a right to appeal under LSA-R.S. 15:574.11(C), Penson's appeal filed with the district court was untimely and thus perempted under LSA-R.S. 15:574.11(D).

CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court.

Costs of this appeal are assessed against Michael Penson.

AFFIRMED.