

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 0771

FREDDIE R. LEWIS

VERSUS

TIMOTHY WILKINSON, WARDEN, WINN CORRECTIONAL CENTER,
CORRECTIONS CORPORATION OF AMERICA, AND SECRETARY,
DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS

Judgment Rendered: December 22, 2010

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit number 585,903

Honorable William Morvant, Presiding

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Freddie R. Lewis
Winnfield, LA

Plaintiff/Appellant
Pro se

William L. Kline
Baton Rouge, LA

Counsel for Defendant/Appellee
Louisiana Department of Public
Safety and Corrections

* * * * *

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Hughes, J., concurs.

FW
RHB

GUIDRY, J.

Petitioner, Freddie Lewis, is an inmate in the custody of the Department of Public Safety and Corrections and is housed at Winn Correctional Center. In September of 2009, the disciplinary board sanctioned Mr. Lewis and punished him with a loss of twelve weeks of canteen privileges and twelve weeks of phone privileges for fighting with a fellow inmate. Mr. Lewis unsuccessfully appealed the Board's decision in DBA-221. Mr. Lewis also filed an administrative remedy procedure (ARP) request, which was rejected by the Department of Public Safety and Corrections, because disciplinary matters are to be appealed exclusively through the disciplinary appellate process. Mr. Lewis subsequently filed a petition for judicial review in the Nineteenth Judicial District Court, seeking review of the disciplinary and the administrative decisions, and naming as defendants Timothy Wilkinson, Warden of Winn Correctional Center, and the Secretary of the Department of Public Safety and Corrections.

The commissioner for the district court, pursuant to screening requirements established by law, considered the pleadings to determine whether Mr. Lewis stated a claim for which relief was available in either of his appeals and found that there was not. After a thorough consideration of all of the evidence, the commissioner recommended that rather than dismissing one of the appeals and considering them separately pursuant to the holding in Lightfoot v. Stalder, 97-2626 (La. App. 1st Cir. 12/28/98), 727 So. 2d 553, both claims should be dismissed for failing to state a substantial right violation, and in addition, for filing the ARP complaint in the wrong administrative procedure, as determined by the final decision of the prison administration.

In recommending that the disciplinary appeal should be dismissed, the commissioner noted that the temporary loss of privileges does not rise to the level of atypical punishment, in which a state might conceivably create a liberty interest.

As such, because Mr. Lewis was given a hearing, as shown by the disciplinary report in the record, the commissioner determined that Mr. Lewis's due process rights were satisfied.

Further, the commissioner noted that Mr. Lewis' ARP complaint was another attempt to appeal the disciplinary decision, and was properly rejected by the Department of Public Safety and Corrections as having been filed under the improper procedure. Appeals from disciplinary decisions must follow the disciplinary appeal process as articulated in La. R.S. 15:1171B and in the Department's regulations contained in LAC, Title 22, Part I, §361.

Finally, because Mr. Lewis was held to know that a disciplinary board appeal that does not involve a good time loss or other atypical penalty does not state a cause of action, the commissioner recommended that the district court impose a strike on Mr. Lewis in the final judgment.

By judgment dated March 29, 2010, the district court dismissed Mr. Lewis's appeals with prejudice for failure to raise a substantial right violation. Moreover, the court also assessed Mr. Lewis with a strike pursuant to La. R.S. 15:1184-1188 for failing to state a cognizable claim or cause of action for relief.

After a thorough review of the record, we find no clear error or error of law in the reasoning and findings of the commissioner, and in accordance with Uniform Court of Appeal Rule 2-16.2A(4-8), affirm the judgment of the district court dismissing Mr. Lewis's appeals and assessing him with a strike.

AFFIRMED.