

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1837

VICTOR JONES

VERSUS

SECRETARY OF CORR. JAMES LEBLANC,
WARDEN, LYNN COOPER, MS. TONIA RACHAL

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Judgment Rendered: May 6, 2011

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 577,998

Honorable William Morvant, Judge Presiding

* * * * *

Victor Jones
Cottonport, LA

Plaintiff-Appellant,
In Proper Person

Debra A. Rutledge
Baton Rouge, LA

Attorney for Defendant-Appellee,
James M. LeBlanc, Secretary of
Louisiana Department of Public
Safety and Corrections

* * * * *

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

Victor Jones, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the Department), filed a petition for judicial review in the Nineteenth Judicial District Court of a final agency decision rendered under the Corrections Administrative Remedy Procedure Act. Jones challenged the Department's award of credit for time served prior to the imposition of sentence on his four consecutive sentences. Thereafter, the Department issued an amended final agency decision awarding credit for time served on all four sentences, but only awarding good-time credit on Jones's first sentence. Following a hearing on January 7, 2010, the parties were allowed to submit post-hearing briefs on the issue of whether the Department was required to award good-time credit on all four sentences for time served prior to the imposition of sentence.

After conducting *de novo* review, the district court adopted the Commissioner's Report as its reasons in its June 21, 2010 judgment, affirming the Department's amended final agency decision and dismissing Jones's suit with prejudice and at the Department's cost. Jones appeals the district court's judgment, maintaining he is entitled to "jail credit" on all four sentences as ordered by the sentencing judge. The Department relies on the provisions of LSA-R.S. 15:571.3B(3), restricting the Department's authority to award an inmate serving consecutive sentences more than thirty days good-time credit for any calendar month served in actual custody awaiting sentence.¹

¹ Louisiana Revised Statute 15:571.3B(3) was amended by Acts 2008, No. 30, § 1, to substitute "thirty-five" for "thirty" days; however, the former version of the statute is applicable in this case.

We find that the Commissioner's Report, adopted by the district court as its reasons, thoroughly and adequately discusses the factual and procedural background of this case and provides an excellent analysis of the applicable law. After an extensive review of the entire record, we also adopt the Commissioner's Report as our reasons and attach a copy of same to our report as Exhibit "A." We agree with the district court's judgment upholding the Department's decision and dismissing Jones's suit. The statutory guidelines found in LSA-R.S. 15:571.3B(3) mandate the award of thirty days good-time credit per calendar month on only one of Jones's sentences and the award of no good-time credits on the portion of Jones's three remaining consecutive sentences served prior to imposition of sentence. Therefore, it is clear that Jones has received all relief available.

Accordingly, we affirm the district court's judgment by summary opinion in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2A(4), (5), (6), and (7). All costs of this appeal are assessed to plaintiff-appellant, Victor Jones.

AFFIRMED.

VICTOR JONES

* NO. 577-998 SECTION: 23

vs.

* 19TH JUDICIAL DISTRICT COURT

SECRETARY JAMES LEBLANC, ET AL

* PARISH OF EAST BATON ROUGE

* STATE OF LOUISIANA

POSTED

JUN 24 2010

COMMISSIONER'S RECOMMENDATION

The petitioner filed the instant request for relief pursuant to R.S. 15:1177 seeking judicial review of the final agency decision rendered under Administrative Remedy Procedure No AVC-2009-82, wherein the petitioner seeks credit for time served on consecutive sentences. The petitioner contends his trial court specifically granted credit for time served on his four consecutive sentences imposed under East Baton Rouge Docket No. 9-96-555. Initially the Department issued an administrative response that denied credit for time served on his consecutive sentences. In support of his request for judicial review, the petitioner attached a copy of his sentencing transcript wherein the sentencing court specified the petitioner was to receive credit for time served from arrest to bond and from remand through the imposition of sentence on each of his four terms. Subsequent to service of this matter, the Department issued an amended final agency decision where the petitioner was given 437 days of awarded credit on his remaining three sentences. The amended response from the Department was accepted into the record over the objection of the petitioner.

At the oral argument conducted by this Commissioner, the petitioner argued that although he had received jail credits on each of his four sentences, he only received good time credits on his jail credits relative to his first sentence. The Department argued that the credit for time served on the petitioner's first sentence was considered by the Department as credit for time served. However, the jail credits for the remaining three sentences were considered

REC'D C.F.

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awarded credit and the Department contends the petitioner is not entitled to good time on awarded jail credits. The parties were allowed to submit post hearing briefs to address the issue of whether the Department is required to award good time on all of the petitioner's four sentences for time served prior to the imposition of sentence. The briefs filed by both parties have been received and considered by this Court.

In the petitioner's brief he contends he was arrested on all four charges on the same day and was sentenced on all four charges on the same day. The petitioner points out that the sentencing court specified the petitioner was to receive jail credits on all his sentences and the Department should be required to consider the time served prior to sentencing on his four sentences as jail credits, rather than awarded credits. The petitioner also contends that subsequent to the date he was sentenced, C.Cr.P Art. 880 was amended to add language providing no inmate shall receive more than 30 days jail credit for any calendar month while serving consecutive sentences and that ex post facto prohibitions prohibit the application of that particular change in the law to his sentence.

The Department argues in the post hearing brief filed in this matter that R.S. 15:571.3(B) restricts the Department's authority to award more than 30 days good time credit for any 30 calendar days served prior to sentencing. The Department also contends that the decision cited by the petitioner, *Williams vs. Cooper*, 954 So. 2d 48 (La. App. 1 Cir. 2006), did not address the issue of whether the Department must award good time on consecutive sentences for time served prior to sentencing.

Initially, this Commissioner recognizes there is a substantial distinction between jail credits for time served prior to sentencing and the award of good time on jail credits. It is clear that in this matter the trial court had the authority to allow the petitioner to receive jail credits on each of his four sentences. It is well recognized that a determination regarding what sentence an inmate is to

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receive is within the authority of the trial court and the trial court's sentencing authority in this matter encompassed any award of credit for time served prior to the imposition of sentence. This Commissioner also notes that C. Cr. P. art. 880 concerns jail credits, rather than good time credits. The Department has acknowledged that the petitioner is entitled to jail credits on all 4 of his sentences and the only issue to be determined by this Court is whether the petitioner may earn good time on his jail credits relative to his three consecutive sentences.

This Commissioner notes the Legislature has provided that the Department of Corrections may determine when good time is earned and credited toward an inmate's sentence. *State v Narcisse*, 714 So. 2d 698 (La. App. 1 Cir. 1998). The statutory provisions of R.S. 15:571.1 through 15:541.14 provide authority and a framework for the Department to award good time. While the sentencing court determines whether credit for time served is allowed on a particular sentence, it is the Department that determines when an inmate is entitled to receive good time credit on the sentence imposed by a trial court. R.S. 15:571(3)(B) provides the Secretary of the Department of Corrections is authorized to establish regulations regarding the awarding and recording of good time earned by inmates in the custody of the Department and is authorized to determine when good time has been earned. Under the provisions of R.S. 15:571.3(B), a sentencing court is only authorized to deny or condition good time eligibility for sex offenders under the provisions of R.S. 15:537. The petitioner was not convicted of a sex offense. It must also be noted that R.S. 15:571.3(B) provides that the Department is to award good time for time served in actual custody, with the exception that no inmate shall receive more than 30 days good time for any calendar month while serving a term of consecutive sentences. The Legislature has specified that no inmate with consecutive sentences shall receive more than 30 days good time credit for any calendar month served in actual custody awaiting sentence. The Department is not allowed to award

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good time credit for time served prior to imposition of the petitioner's four consecutive sentences, in excess of 30 days good time credit for every thirty days served. This results in the award of thirty days good time credit per calendar month on only one of the petitioner's sentences and the award of no good time credits on the portion of the petitioner's three remaining sentences served prior to imposition of sentence. While the trial court has authority to provide the petitioner receive jail credits on all four of his consecutive terms, the decision of the trial court to allow for jail credits on all four consecutive terms does not require that the Department award good time on all four consecutive terms. Good time credits are awarded by the Department within the statutory guidelines provided by the Legislature. The provisions of R.S. 15:571.3(B) prohibit the Department from awarding good time on any portion of a consecutive sentence served prior to imposition of sentence and the Department has adopted a valid regulation in accord with the restrictions of R.S. 15:571.3(B). It is the finding of this Commissioner that the petitioner is not entitled to receive any additional good time credits in this matter and this Commissioner finds that the petitioner has received all relief available.

Accordingly, it is the recommendation of this Commissioner that this matter be dismissed with prejudice based on the finding the petitioner has obtained all available relief and the defendants amended final agency decision should be affirmed on judicial review. Due to the fact that relief was not provided until after this matter was filed, the defendants should pay all costs in this matter.

Respectfully recommended this 21 day of May

2010.

FILED

MAY 21 2010

Brenda Sack
DY. CLERK OF COURT

John M. Smart, Jr.
JOHN M. SMART, JR.
COMMISSIONER, SECTION B
19TH JUDICIAL DISTRICT COURT

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS / JUDGMENT / ORDER / COMMISSIONER'S RECOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED TO ALL PARTIES NOTIFIED AND SIGNED ON 5/21/10

Brenda Sack
DEPUTY CLERK OF COURT