

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

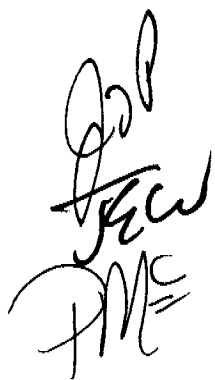
NO. 2010 CA 2292

JONAS WILLIAMS

VERSUS

LA. BOARD OF PAROLE; LA. DEP'T
OF PUBLIC SAFETY & CORRECTIONS

Judgment rendered November 9, 2011.



Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 586,524
Honorable Kay Bates, Judge

JONAS WILLIAMS
ST. GABRIEL, LA

IN PROPER PERSON
PLAINTIFF-APPELLANT

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ATTORNEYS FOR
DEFENDANT-APPELLEE
LOUISIANA PAROLE BOARD

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

PETTIGREW, J.

In this case, petitioner, Jonas Williams, an inmate in the custody of the Department of Public Safety and Corrections ("DPSC"), filed a petition for *habeas corpus* in the 19th Judicial District Court, seeking judicial review of the decision of the Louisiana Parole Board ("the Board") to revoke his parole. The action was initially referred to a commissioner for review pursuant to La. R.S. 15:1188.¹ Following its *de novo* review of the record, the district court adopted the commissioner's recommendation and dismissed petitioner's action in a judgment signed on July 28, 2010. For the reasons that follow, we reverse and remand.

In 1984, petitioner was convicted of attempted second degree murder, aggravated battery, and aggravated assault in Louisiana and sentenced to a term of twenty-five (25) years imprisonment with DPSC. On May 13, 2000, petitioner was released under parole supervision. In August 2005, petitioner and his family fled New Orleans, Louisiana, to Houston, Texas, under mandatory evacuation due to Hurricane Katrina. Petitioner's parole supervision was subsequently transferred to Texas. On November 3, 2008, petitioner was arrested in Texas on a charge of "Evade Arrest W/Motor Vehicle." According to the record, petitioner pled guilty as charged to a "State Jail Felony" on March 23, 2009, and was sentenced to one (1) year in the county jail. After serving his term in Texas, petitioner, based on a parole violation, was returned to the physical custody of DPSC to serve out his term.

Petitioner filed the instant request for *habeas* relief contending that he is being held in the physical custody of DPSC without a final revocation hearing and that there is no legal authority for his return to DPSC's physical custody. Petitioner acknowledged that he waived a preliminary parole revocation hearing while serving a one-year sentence in Texas. However, petitioner argues that he was convicted of a misdemeanor grade

¹ The offices of commissioner of the 19th Judicial District Court were created by La. R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. La. R.S. 13:713(A). The district judge "may accept, reject, or modify in whole or in part the findings or recommendations made by the commissioner and also may receive further evidence or recommit the matter to the commissioner with instructions." La. R.S. 13:713(C)(5).

offense in Texas while on parole supervision from Louisiana and maintains that he never received a final parole revocation hearing.

In response, DPSC contends that petitioner's Texas conviction was for a felony grade offense, but that the Texas trial court imposed only a misdemeanor grade punishment. The revocation record submitted by DPSC contains an October 8, 2009 letter from the Board advising petitioner that his parole was revoked based on his new felony conviction pursuant to La. R.S. 15:574.10.

The commissioner found as follows: "[T]he record submitted in this matter supports the finding that the petitioner was convicted of a felony grade offense in Texas and a final parole revocation hearing was not required, under R.S. 15:574.10." Petitioner's Parole Board Action Sheet indicates that on October 7, 2009, petitioner's parole was deemed revoked by the Board based on this new felony conviction and he was returned to Hunt Correctional Center on October 8, 2009.

Louisiana Revised Statutes 15:574.10 provides, in pertinent part, as follows:

When a person is convicted in this state of a felony committed while on parole or is convicted under the laws of any other state or of the United States or any foreign government or country of an offense committed while on parole, and **which if committed in this state would be a felony**, his parole shall be deemed revoked as of the date of the commission of the felony or such offense under the laws of the other jurisdiction. [Emphasis added.]

The record before us does not contain an incident report from petitioner's November 3, 2008 arrest for "Evade Arrest W/Motor Vehicle." The only information in the record concerning the offense is in the "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession" that petitioner signed on March 23, 2009. In said document, the following description is given: "[O]n or about **NOVEMBER 3, 2008**, [petitioner] did then and there unlawfully, intentionally flee from R.WIENERS ... a peace officer ... lawfully attempting to DETAIN [petitioner], and [petitioner] knew that [WIENERS] was a peace officer attempting to DETAIN [him], and [petitioner] used a motor vehicle while ... in flight." Although it is clear from the record that petitioner was convicted of what amounts to a felony grade offense in Texas, we are unable to determine from this record whether

the same offense, if committed in Louisiana, would amount to a felony.² The record does not support a finding that petitioner's parole was properly revoked pursuant to La. R.S. 15:574.10. Accordingly, the commissioner's conclusion that a final parole revocation hearing was not required under La. R.S. 15:574.10 was in error, and this matter is remanded for a full hearing on petitioner's habeas petition.

DECREE

For the above and foregoing reasons, we reverse the July 28, 2010 judgment of the district court and remand for further proceedings consistent with this opinion. Appeal costs in the amount of \$1,130.94 are assessed against the Department of Public Safety and Corrections. We issue this memorandum opinion in accordance with Uniform Rules-- Courts of Appeal, Rule 2-16.1B.

REVERSED AND REMANDED.

² In Louisiana, the basic offense of flight from an officer, a six-month misdemeanor, is committed when the offender intentionally refuses to bring his vehicle to a stop "knowing that he has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver has committed an offense." La. R.S. 14:108.1(A). The crime of aggravated flight from an officer, a two-year felony offense, occurs when the offender flees from an officer (as defined in subsection A) under circumstances "wherein human life is endangered." La. R.S. 14:108.1(C). The statute provides a specific and seemingly exclusive definition of the aggravating factors, which elevate the crime from a misdemeanor to a felony. An offender creates circumstances in which human life is endangered when he commits *at least* two of the following acts: (1) leaves the roadway or forces another vehicle to leave the roadway; (2) collides with another vehicle; (3) exceeds the posted speed limit by at least 25 miles per hour; (4) travels against the flow of traffic; (5) fails to obey a stop sign or a yield sign; (6) fails to obey a traffic control signal device. La. R.S. 14:108.1(D).