

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0495

RONNIE WILLIAMS

VERSUS

STATE OF LOUISIANA BOARD OF PARDONS AND PAROLE

CF
GMZ
WBM
DATE OF JUDGMENT: NOV - 9 2011

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 591,803, DIV. 23, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE WILLIAM MORVANT, JUDGE

Ronnie Williams
St. Gabriel, Louisiana

Pro se

William Kline
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
Department of Public Safety and
Corrections

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: AFFIRMED.

KUHN, J.

Petitioner-appellant, Ronnie Williams, an inmate in the custody of the Louisiana Department of Public Safety and Corrections, appeals a district court judgment dismissing, with prejudice, his demands for habeas corpus and injunctive relief against the Louisiana Board of Parole and Pardons (Parole Board) for failure to state a cause of action.¹ The district court did not allow appellant an opportunity to amend his petition.

In considering an exception of no cause of action, a court must accept all well-pleaded facts in the petition as true. The function of the exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts of the pleading. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234, 1235 (La. 1993); *Cage v. Adoption Options of Louisiana, Inc.*, 94-2173, p. 3 (La. App. 1st Cir. 6/23/95), 657 So.2d 670, 671. Because it raises a question of law, an appellate court reviews an exception of no cause of action *de novo*. *Louisiana State Bar Ass'n v. Carr and Associates, Inc.*, 08-2114, p. 11 (La. App. 1st Cir. 05/08/09), 15 So.3d 158, 167, *writ denied*, 09-1627 (La. 10/30/09), 21 So.3d 292. A judgment sustaining a peremptory exception shall permit amendment of the petition when

¹ Louisiana Revised Statutes 15:1188A provides, in pertinent part, that:

The court shall review, before docketing if feasible or, in any event, before service on the defendants, a petition in a civil action in which a prisoner seeks redress from a governmental entity On review, the court shall identify cognizable claims **or dismiss the petition ... if the petition ... fails to state a cause of action ... or fails to state a claim upon which relief can be granted.**

[Emphasis added.]

the grounds of the objection may be removed by amendment. However, when the grounds of the objection cannot be removed by amendment, the action shall be dismissed. See La. C.C.P. art. 934; *American Intern. Gaming Ass'n, Inc. v. Louisiana Riverboat Gaming Com'n*, 00-2864, p. 17 (La. App. 1st Cir. 09/11/02), 838 So.2d 5, 18.

A review of the allegations of appellant's petition (styled as an "Application for Writ of Habeas Corpus and Temporary Injunction") reveals that the basis of his demands is the claim that his prospective release for diminution of sentence due to "good time" while being subject to parole supervision as required by La. R.S. 15:571.5B(2), as well as the payment of parole supervision fees, violates his constitutional rights to due process and equal protection, and subjects him to double jeopardy, involuntary servitude, and the *ex post facto* application of law regarding his sentence. He further claims that the requirements of parole supervision and the payment of supervision fees constitute a breach of the contract he signed when he opted to receive good time credits in lieu of incentive wages, as well as rendering his sentence illegal because he was sentenced under a provision that does not allow parole eligibility. Appellant further asserts that he agreed to parole supervision under duress when he signed up for good time eligibility.

In *Ferrington v. Louisiana Board of Parole*, 03-2093 (La. App. 1st Cir. 6/25/04), 886 So.2d 455, *writ denied*, 04-2555 (La. 6/24/05), 904 So.2d 741, this Court rejected similar arguments that the requirement of La. R.S. 15:571.5 that an inmate who has obtained a good time release be subject to parole supervision violated the inmate's constitutional rights. This Court concluded that, even accepting the allegations of the inmate's petition as true, the pleading failed to

state a cause of action since the constitutionality of La. R.S. 15:571.5 has previously been upheld. *Ferrington*, 03-2093 at p. 7, 886 So.2d at 459. See also *Manuel v. Stalder*, 04-1920 (La. App. 1st Cir. 12/22/05), 928 So.2d 24 (rejecting a claim that the La. R.S. 15:571.5 requirement of parole supervision was unconstitutional as to the petitioner because his sentence provided he was ineligible for parole); *Frederick v. Ieyoub*, 99-0616, (La. App. 1st Cir. 5/12/00), 762 So.2d 144, *writ denied*, 00-1811 (La. 4/12/01), 789 So.2d 581 (rejecting substantive due process and equal protection challenges to La. R.S. 15:571.5); *Bancroft v. Louisiana Dept. of Corrections*, 93-1135 (La. App. 1st Cir. 4/8/94), 635 So.2d 738 (rejecting arguments of duress, *ex post facto* violation and breach of contract).

Accordingly, based on our *de novo* review of the petition, we conclude that, because it failed to assert facts upon which relief may be granted, the district court properly dismissed appellant's demands against the Parole Board for failure to state a cause of action. We further conclude that no possible amendment could cure the deficiencies of the petition. All costs of this appeal are assessed against appellant, Ronnie Williams.

AFFIRMED.