

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

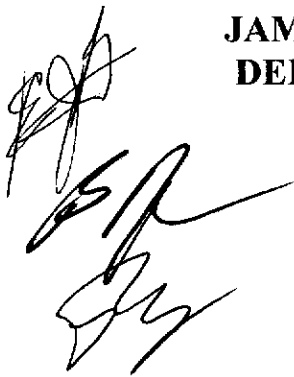
FIRST CIRCUIT

NO. 2012 CA 0748

KEVIN LEE DAVIS

VERSUS

**JAMES LEBLANC, STEVE RADER, STATE OF LOUISIANA,
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS**



Judgment Rendered: December 21, 2012

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 596,633**

The Honorable R. Michael Caldwell, Judge Presiding

**Kevin Lee Davis
Jackson, Louisiana**

**Plaintiff/Appellant
*Pro Se***

**Jonathan R. Vining
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellee
James M. Leblanc, State of
Louisiana, Department of Public
Safety and Corrections**

BEFORE: CARTER, C.J., GUIDRY, AND GAIDRY, JJ.

GAIDRY, J.

This is an appeal of the judicial review by the Nineteenth Judicial District Court of a claim by Appellant Kevin L. Davis, an inmate of the Louisiana Department of Corrections (“DOC”), for being held beyond his good-time release date while awaiting approval of his residence plan as a sex offender, as required by Louisiana Revised Statutes § 15:574.4(S)¹. For the following reasons, we affirm the court’s decision to dismiss the Appellant’s petition with prejudice.

FACTS AND PROCEDURAL HISTORY

On December 15, 1998, Mr. Davis pled guilty to four (4) counts of aggravated oral sexual battery and four (4) counts of molestation of a juvenile, for which he was sentenced to a total of twenty-two (22) years at hard labor. The sentence was made pursuant to the guidelines of La. R.S. 15:542, which required him to register as a sex offender upon his release. Mr. Davis was then remanded to DOC. On December 18, 2000, Mr. Davis was approved to become eligible for good-time computation of his sentence, at the rate of thirty (30) days for every thirty (30) days spent in actual custody.

On or about May 23, 2010, Mr. Davis filed a request for administrative remedy at Dixon Correctional Institute, where he was housed. In the request, Mr. Davis alleged to be held beyond his good-time release date, which he claimed was October 22, 2009, in violation of his constitutional rights and La. R.S. 15:571.4, which governs the forfeiture of diminution of sentence. His request for relief was “to be released in accordance to the law.” DOC’s “first step” response to his request was a denial on July 1, 2010, the given reason being that as a sex offender he could

¹ This Subsection was redesignated as Louisiana Revised Statutes § 15:574.4.3(E) by Act 241 of 2010 Acts.

not be released until he had an approved residence plan. Mr. Davis then applied for a “second step” response, his reason being that DOC was applying La. R.S. 15:574.4(S), which did not exist at the time of his sentencing. DOC’s “second step” response was also a denial for the same reason, but included *Kozlowicz v. Dept. of Public Safety & Corrections*, 2008-1806 (La. App. 1 Cir. 3/27/09), 9 So.3d 1000 to support the contention that Mr. Davis’s extended detention was not illegal.

After exhausting all his administrative remedies, Mr. Davis filed a petition for judicial review with the 19th JDC on November 15, 2010. Commissioner Rachel Morgan filed a report on June 22, 2011, recommending dismissal of Mr. Davis’s petition, stating that the issue of the petition has already been addressed and determined by *Kozlowicz*. The court adopted the reasons of the Commissioner’s report and dismissed Mr. Davis’s petition with prejudice on September 7, 2011. Mr. Davis filed the instant pro se appeal on September 23, 2011.

DISCUSSION

The court is correct that the *Kozlowicz* case deals squarely with the issue raised by Mr. Davis, and we find no reason to divert from its reasoning. We therefore adopt the following language:

...We note the crux of petitioner’s challenge of [La.R.S 15:574.4(S)] is dependent on a property and liberty interest created by the earning of good time credit. The petitioner’s allegations of unconstitutionality... are based on this belief that he has a constitutionally protected interest in good time that he earned, and that due process requires that he be afforded a hearing before the Department can deprive him of it...

In considering petitioner’s claims of unconstitutionality, we begin with the well-settled principle that all statutory enactments are presumed to be constitutional. The party challenging the constitutionality of a statute bears the burden of proving the statute to be unconstitutional. Statutes are presumed valid and their constitutionality should be upheld whenever possible...

....

We recognize that the petitioner was not released on the date... that the Department's master record indicated he could have been discharged pursuant to diminution of sentence. However, this was not due to an action, or omission, by the Department resulting in a violation of due process because it was a deprivation without a hearing. As has already been established, the reason petitioner was not released on his good time discharge date is because he did not have an approved residence plan as required by La. R.S. 15:574.4(S). The fact that he has a constitutionally protected interest in good time does not deprive the legislature of the right to enact legislation that possibly has the effect of impacting the statutorily created interest. Further, the fact that the Department may not deprive a prisoner of good time without a hearing does not have any legal relevance to the situation here, because the Department did nothing to deprive the prisoner of his good time. Rather, the Department was prohibited by statute from releasing the prisoner.

Kozlowicz, 9 So.3d at 1005-1006 (citations omitted)

Using the aforesaid rationale, we affirm the 19th JDC's judgment and dismiss Mr. Davis's petition with prejudice. Costs of this appeal are assessed to the Appellant, Kevin Davis.

AFFIRMED.