

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1438

JOHN POUILLARD

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY  
AND CORRECTIONS

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Judgment Rendered: MAR 26 2013

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
DOCKET NUMBER 599670

THE HONORABLE JANICE G. CLARK, JUDGE

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John Poullard  
Angola, Louisiana

Plaintiff/Appellant  
Pro Se

Terri Lynn Cannon  
Angola, Louisiana

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

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

**McDONALD, J.**

Plaintiff, John Poullard, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“DPSC”), appeals a judgment of the district court affirming DPSC’s final agency determination that denied his request for reinstatement of good time credits. For the following reasons, we affirm.

**Background**

Mr. Poullard filed this appeal of ARP #LSP-2010-3073, seeking review in accordance with La. R.S. 15:1171 et seq. In it, Mr. Poullard challenges the DPSC’s authority to forfeit any earned good time credits between the year 2000 and 2010. He asserts that La. R.S. 15:571.4 was invalidated by **Cao v. Stalder**, 2004-0650 (La. App. 1 Cir. 5/6/05), 915 So.2d 851 (wherein this court held that only earned good time credits could be forfeited in a disciplinary action). Mr. Poullard contends that the current promulgated penalty, La. R.S. 15:571.4, does not expressly limit forfeiture of good time to earned good time only. Mr. Poullard contends that DPSC must repromulgate the statute as amended to include the word “earned” before the words “good time” before any good time can be forfeited as a disciplinary sanction; therefore, all prior forfeitures (including his forfeitures from 2000 to 2010) were null and void.

**Discussion**

In 1998, this court held in **Rivera v. State**, 98-0507 (La. App. 1 Cir. 12/28/98), 727 So.2d 609, 613, writ denied, 99-0289 (La. 3/26/99), 740 So.2d 617, that since the DPSC failed to promulgate the amended version of La. R.S. 15:571.4B(4) as required by La. R.S. 15:571.4C, the DPSC was bound to the use of its prior published version. In 1999, La. R.S. 15:571.4B(4) was properly promulgated as amended to include an adjustment to the maximum amount of

good time that could be forfeited in a disciplinary action.<sup>1</sup> Since the 1999 promulgation, this statute has remained largely unchanged. This court has confirmed on at least two occasions that La. R.S. 15:571.4 was properly published in 1999.<sup>2</sup>

In **Cao v. Stalder**, 915 So.2d at 857-858, this court held that a strict construction of La. R.S. 15:571.4 mandates the conclusion that unless good time has been earned by an inmate, it cannot be forfeited. Therefore, forfeiture of prospective or future good time is not authorized by the statute, and the imposition of such a penalty is excessive. Mr. Poullard asserts that this meant that the DPSC had to repromulgate the rule to include the limiting language of “earned” good time, before any good time could be forfeited as a disciplinary sanction, and that all prior forfeitures were null and void. His reliance on **Cao** is misplaced. **Cao** did not invalidate La. R.S. 15:571.4. This court’s decision in **Cao** left the regulation intact, but interpreted it in accordance with the legislative intent in La. R.S. 15:571.4. *Id.* (See La. R.S. 15:571.4 A, B(1)-(3), all of which refer to earned good time as forfeited).

### **Conclusion**

Since the statute was properly in effect when Mr. Poullard’s earned good time credits were forfeited as a disciplinary action, we find no error in the DPSC’s denial of relief. After a careful consideration of the administrative record, and having considered the statutory law and promulgated rule applicable, for the reasons hereinabove stated, we affirm the district court’s judgment. Costs of this appeal are assessed against the plaintiff, John Poullard.

**AFFIRMED.**

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<sup>1</sup> The 1999 promulgation, increasing the forfeiture limit from 30 days to 180 days is found in an emergency rule in the *Louisiana Register*, Vol. 25, No. 1, p. 15, effective January 4, 1999, and the final rule change is found in the *Louisiana Register*, Vol. 25, No. 2, p. 357, effective February 20, 1999.

<sup>2</sup> See **Washington v. Louisiana State Penitentiary**, 98-1310 (La. App. 1 Cir. 6/25/99), 740 So.2d 761, 765-766, n.5; and **Varner v. Day**, 2000-2104 (La. App. 1 Cir. 12/28/01), 806 So.2d 121, 125, n.5.