

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1475

DAVID W. POYDRAS

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONS

*DATE OF JUDGMENT:* MAR 25 2013

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
NUMBER 609,720, SECTION 22, PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

HONORABLE TIMOTHY E. KELLEY, JUDGE

\* \* \* \* \*

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In Proper Person  
Angola, Louisiana

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David W. Poydras

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Baton Rouge, Louisiana

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Louisiana Department of Public  
Safety and Corrections

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BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

**Disposition: AFFIRMED.**

KUHN, J.,

Petitioner-appellant, David W. Poydras, an inmate in the custody of the Department of Public Safety and Corrections (the Department), appeals the district court's dismissal of his suit without prejudice. We affirm.

The petitioner filed an administrative remedy procedure (ARP) with the Department requesting that he be referred for consideration for medical parole because he allegedly had been poisoned and had not received proper medical care. After the denial of his ARP, he filed a petition in the Nineteenth Judicial District Court captioned "Application For: Criminal Post-Conviction Habeas Corpus," in which he alleged he had been poisoned by a prison guard in March 2009 and that he has been unable to obtain proper medical treatment for his resulting illness. He further complained of the Department's refusal either to transfer him to an outside hospital or refer him for consideration for medical parole. He also contended that La. R.S. 15:574.20(C) is unconstitutional as applied to him, since it provides that the Department was the entity that shall identify those inmates who might be eligible for medical parole. Finally, the petitioner asserted that his custody has become unlawful as a result of the Department's refusal to act, entitling him to immediate release from custody. Subsequently, the petitioner also filed a supplemental petition requesting that several individual defendants be referred for criminal prosecution due to their role in concealing the alleged poisoning.

On March 13, 2012, the district court, noting that no pauper order was attached to the petitioner's petition, rendered an order advising him that his suit would be dismissed if he failed to either pay the filing fees or apply for pauper status

within thirty days. On April 27, 2012, the commissioner<sup>1</sup> issued a recommendation that the suit be dismissed due to the petitioner's failure to comply with the costs order. In making this recommendation, the commissioner noted that this matter was civil, rather than criminal, in nature and fell within the scope of La. R.S. 15:1171-1178, the Corrections Administrative Remedy Procedure (CARP), since the petitioner did not raise any post-conviction claims regarding his criminal conviction or sentence.<sup>2</sup>

After considering the commissioner's report and the petitioner's traversal thereof, the district court adopted the commissioner's recommendation and dismissed the petitioner's claims without prejudice based on his failure to comply with the court's costs order. Additionally, the district court recommended that a copy of the petitioner's pleadings be forwarded to the district attorneys for West Feliciana Parish and East Baton Rouge Parish. The petitioner now appeals, arguing that, since his claims actually constitute a "criminal post-conviction habeas corpus," the district court erred in treating this matter as a civil suit and dismissing it for failure to pay costs or timely file a pauper order.

After a thorough review of the pleadings and the record, we find no error in the judgment of the district court dismissing the petitioner's suit. Although the petitioner labeled his pleadings as applications for post-conviction habeas relief, Louisiana courts look beyond the caption, style, and form of pleadings to determine from the substance of the pleadings the true nature of the proceeding. Thus, a

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<sup>1</sup> The office of commissioner of the Nineteenth Judicial District Court was created by La. R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state inmates. *Owens v. Stalder*, 06-1120 (La. App. 1st Cir. 6/8/07), 965 So.2d 886, 888 n.6.

<sup>2</sup> The commissioner's conclusion that the petitioner raised no post-conviction claims attacking his conviction or sentences in his original or supplemental pleadings is correct, although the petitioner subsequently attempted to raise such claims for the first time in his traversal to the commissioner's report.

pleading is construed for what it really is, not for what it is erroneously called. *Rochon v. Young*, 08-1349 (La. App. 1st Cir. 2/13/09), 6 So.3d 890, 892, writ denied, 09-0745 (La. 1/29/10), 25 So.3d 824, cert. dismissed, \_\_\_\_ U.S. \_\_\_\_, 130 S.Ct. 3325, 176 L.Ed.2d 1216 (2010).

In the instant matter, the petitioner's complaints concern the conditions of his confinement and the Department's refusal to refer him for consideration for medical parole. On the basis of these complaints, he alleges he is entitled to an immediate release. However, these complaints do not constitute a true request for criminal post-conviction habeas relief since they do not attack the petitioner's conviction or sentence. See La. C.Cr.P. art. 924(1). Moreover, in Louisiana, parole is defined by statute as "an administrative device" rather than as a criminal matter. See La. R.S. 15:574.11(A); *Bosworth v. Whitley*, 627 So.2d 629, 631 (La. 1993).<sup>3</sup>

Based on our thorough review of the record, we find no error in the dismissal of petitioner's suit without prejudice. Therefore, the judgment of the district court is affirmed. Appeal costs are assessed against petitioner-appellant, David W. Poydras.

**AFFIRMED.**

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<sup>3</sup> Regarding the petitioner's request that criminal proceedings be instituted against several named defendants for their alleged role in concealing the alleged poisoning, we note that the district attorney has broad discretion in both the institution and handling of criminal prosecutions, and may decide whom, when, and how to prosecute. La. Const. art. 5, § 26(B); La. R.S. 16:1(B); La. C.Cr.P. art. 61; *State v. Odom*, 07-0516 (La. App. 1st Cir. 7/31/08), 993 So.2d 663, 668. For this reason, the district court recommended that a copy of the petitioner's pleadings be forwarded to the district attorneys for the pertinent parishes.