

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1557

DALE F. MCKISSICK

VERSUS

MR. JAMES M. LEBLANC, SECRETARY; MR. R. HENDERSON,
WARDEN; MS. C. HEBERT, RECORDS ANALYST; MS. L. RAMSEY,
DESIGNEE FOR SECRETARY; AND OTHER AGENTS AS THEY
MAY APPEAR – IN INDIVIDUAL AND OFFICIAL CAPACITIES

DATE OF JUDGMENT: JUN 07 2013

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 599,202, SEC. 25, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE WILSON FIELDS, Judge

Dale F. McKissick
Houma, Louisiana

Pro Se

Debra A. Rutledge
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
James M. LeBlanc, Secretary

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

Disposition: AFFIRMED.

KUHN, J.

Appellant, Dale M. McKissick, formerly an incarcerated prisoner, appeals the district court's judgment, sustaining an exception of lack of subject matter jurisdiction filed by appellee, James M. LeBlanc, Secretary of the Department of Public Safety and Corrections (DPSC), and dismissing without prejudice his petition for judicial review. We affirm.

As explained to appellant by the commissioner, because he has been released from incarceration, his claim for judicial review of DPSC officials' denial of relief pursuant to the Louisiana Corrections Administrative Remedy Procedure (wherein he averred that calculations in his sentence had been made) is moot. See Williams v. Int'l Offshore Services, LLC, 2011-1240 (La. App. 1st Cir. 12/7/12), 106 So.3d 212, 218, writ denied, 2013-0259 (La. 3/8/13), 106 So.3d 367 (a "justiciable controversy" is one presenting an existing actual and substantial dispute involving the legal relations of parties who have real adverse interests and upon whom the judgment of the court may effectively operate through a decree of conclusive character).

Appellant urges that his entitlement to relief is not moot because as a pretrial detainee at the time he filed this petition for judicial review, he had a reasonable expectation that computation errors may reoccur. But we find such speculation insufficient to create a justiciable controversy. Thus, the district court correctly sustained DPSC's exception raising the objection of lack of subject matter jurisdiction and dismissed his petition.¹

¹ In his brief to this court, appellant asserts that a petition for damages filed in the Thirty-Sixth Judicial District Court was dismissed as untimely due to jail transfers. He urges that, as such, this court is required to apply a liberal construction to his pleading and review a ruling by the Nineteenth Judicial District Court dismissing without prejudice as having been filed in improper venue, an earlier filed petition for damages arising out of the same factual assertions, i.e., that defendants have miscalculated his sentence. Because this court lacks subject matter jurisdiction to review the propriety of the judgment signed on January 18, 2011, see La. R.S. 15:1177A(1)(5) & (10) (limiting review to the issues presented in the petition for review and permitting an offender to appeal a final judgment of the district court to the appropriate court of appeal), the matter is not properly before us.

DECREE

Accordingly, in conformity with the reasons set forth in the commissioner's recommendation finding appellant's entitlement to relief moot and concluding that the court lacks subject matter jurisdiction to review the claims asserted in his petition for judicial review, we affirm the district court judgment dismissing his petition without prejudice. Appeal costs are assessed against appellant, Dale F. McKissick.

AFFIRMED.