

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 CA 1718

KIP LONDON

VERSUS

LOUISIANA DEPARTMENT OF CORRECTIONS

Judgment Rendered: JUN 03 2013

\*\*\*\*\*

Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket Number 599,361

The Honorable William Morvant, Judge Presiding

\*\*\*\*\*

Kip London  
Winnsboro, LA

Plaintiff/Appellant,  
In Proper Person

William L. Kline  
Baton Rouge, LA

Counsel for Defendant/Appellee,  
James M. LeBlanc

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

WJW  
JMC  
/MH

**WHIPPLE, C.J.**

Petitioner, Kip London, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), housed at the Franklin Parish Detention Center in Winnsboro, Louisiana, appeals from a judgment of the district court dismissing, without prejudice, his claim that the Parole Board violated his due process rights, and dismissing, with prejudice in accordance with the Commissioner's Recommendation, his remaining claims raised through administrative remedy procedure number HDQ-2009-1850. Finding no error, we affirm.

**DISCUSSION**

On September 26, 1985, petitioner was sentenced to serve twenty-five years for his conviction of an armed robbery. Petitioner opted to receive double good time credits in lieu of incentive wages and executed a "Double Good Time Option and Approval Form" on December 18, 1987, pursuant to LSA-R.S. 15:571.14.<sup>1</sup> On April 27, 1997, petitioner became eligible for

---

<sup>1</sup>Louisiana Revised Statute 15:571.14 entitled, "Increased diminution of sentence for good behavior," was enacted by Acts 1986, No. 299, § 1, effective August 30, 1986, after petitioner's sentencing herein, and was subsequently repealed by Acts 1991, No. 138, § 3, effective January 31, 1992, prior to petitioner's eligibility for release by diminution of sentence. Nonetheless, the version of LSA-R.S. 15:571.14 in effect at the time petitioner opted for double good time, which petitioner cites and relies on herein, provided as follows:

Notwithstanding any other provision of this Part, inmates who meet the criteria of this Section shall have the option to receive increased diminution of sentence for good behavior, hereinafter referred to as "good time", in lieu of incentive wages. The granting of this option shall be governed by the following provisions:

- (1) The inmate must have been committed to the Department of Public Safety and Corrections.
- (2) The inmate must be eligible to receive both good time and incentive wages.
- (3) The option must be exercised at the time the inmate becomes eligible for incentive wages.
- (4) The option must be approved by the secretary of the Department of Public Safety and Corrections or his designated representative.
- (5) Once the option is exercised and approved, it shall be irrevocable for the sentence for which the inmate is incarcerated.
- (6) The increased good time shall be earned at twice the rate otherwise provided in this Part.

release by diminution of sentence in accordance with LSA-R.S. 15:571.5, and was released on supervised parole. However, on June 10, 2009, petitioner was arrested on a parole violation. After pleading guilty and waiving a final parole revocation hearing, petitioner's parole was revoked on June 16, 2009.<sup>2</sup>

On appeal, petitioner contends that when he agreed to give up incentive wages to earn double good time, he entered into a "contract" with the Department. He further contends the version of LSA-R.S. 15:571.14, in effect at the time he opted for good time, did not require that he be placed on parole supervision upon his release, nor did it provide for the loss of all good time earned prior to a release on parole supervision. Petitioner contends that after fulfilling his obligations under the terms of the contract, "the defendants then recanted on [their] part of the agreement, by changing the governing [statute] from R.S. 15:571.14 to R.S. 15:571.5." Petitioner argues that by "illegally changing" the controlling statutes, he was placed under the "provision of parole supervision which was not part of the contract that was sign[ed] between appellant and defendants." Instead, petitioner contends that the twelve and one-half years he initially served in physical custody allowed him to fully satisfy and complete his twenty-five year sentence and that he should not have been placed on supervised parole when he reached his good time release date.

At the outset, we note that the law in effect at the time of an offender's release governs the terms of the offender's release, rather than that in effect at the time of the offender's commission of the offense or at the time of the

---

(7) Inmates who receive increased good time under this Section shall not receive incentive wages and shall not be deemed indigent as defined by the department.

<sup>2</sup>To the extent that petitioner challenges the district court's dismissal, without prejudice, of his claim against the Parole Board, we find no error. As the district court properly concluded, petitioner's complaint should be addressed in an action against the Parole Board, as Louisiana Administrative Code Title 22, Part 1, Section 325(F)(3)(b) provides that Parole Board decisions are not reviewable through the Administrative Remedy Procedure.

offender's entry into the good time credits program. Bancroft v. Louisiana Department of Corrections, (La. App. 1<sup>st</sup> Cir. 4/8/94), 635 So. 2d 738, 741. As such, LSA-R.S. 15:571.5,<sup>3</sup> which, unlike LSA-R.S. 15:571.14, was in effect at the time at the time of petitioner's release, (as well as at the time he opted to receive double good time credits in lieu of incentive wages) required, among other things, that any "person released because of diminution of sentence ... shall be supervised in the same manner and to the same extent as if he were released on parole." LSA-R.S. 15:571.5(B)(2).

As noted by the Commissioner, relying on Bancroft:

[A]fter July 1, 1982, the effective date of R.S. 15:571.5(A), offenders who are released pursuant to earned good time credits are to be released as if on parole. **While there may have been no mention of the requirement of parole supervision on the petitioner's good time approval form, the provision of R.S. 15:571.5 in effect at the time the approval form was signed, required the petitioner be placed on parole supervision when he reached his good time release date.** ... [T]he Bancroft decision additionally found that the law in effect at the time of an inmate's release, governs the terms of such a release from physical

---

<sup>3</sup>At the time of petitioner's release, Louisiana Revised Statute 15:571.5, entitled, "Supervision upon release after diminution of sentence for good behavior; conditions of release; revocation," provided, in part, as follows:

A. When a prisoner committed to the Department of Public Safety and Corrections is released because of diminution of sentence pursuant to this Part, he shall be released as if released on parole.

\* \* \*

B. (1) Before any prisoner is released on parole upon diminution of sentence, he shall be issued a certificate of parole that enumerates the conditions of parole. These conditions shall be explained to the prisoner and the prisoner shall agree in writing to such conditions prior to his release on parole.

(2) The person released because of diminution of sentence pursuant to this Part shall be supervised in the same manner and to the same extent as if he were released on parole. The supervision shall be for the remainder of the original full term of sentence. If a person released because of diminution of sentence pursuant to this Part violates a condition imposed by the parole committee, the committee shall proceed in the same manner as it would to revoke parole to determine if the release upon diminution of sentence should be revoked.

C. If such person's parole is revoked by the committee board for violation of the terms of parole, the person shall be recommitted to the department for the remainder of the original full term.

custody. The provisions of R.S. 15:571.5(A) applied to this petitioner's release and required that he satisfy and complete his sentence by remaining under parole supervision until he reached his full term date. [Emphasis added.]

Thus, to the extent that petitioner argues LSA-R.S. 15:571.5 does not apply herein, we disagree.

Alternatively, petitioner argues that if LSA-R.S. 15:571.5 does apply, then he is entitled to "credit for time served for good behavior while on parole," under the current version of LSA-R.S. 15:571.5(C). The provision entitling offenders to credit for time served for good behavior on parole was added by Acts 2010, No. 792, § 1, effective August 15, 2010, and was not in effect at the time of petitioner's parole eligibility or subsequent revocation. This Court has previously determined that the 2010 amendment to LSA-R.S. 15:571.5(C) is a substantive change in the law that cannot be applied retroactively. See Rochelle v. LeBlanc, 2010-1901 (La. App. 1<sup>st</sup> Cir. 5/6/11), 65 So. 3d 240, 243. As such, petitioner is not entitled to relief under this provision.

Nonetheless, under the applicable version of LSA-R.S. 15:571.5(C), to the extent that petitioner contends that he was in the Department's "custody" while under supervised parole, and, accordingly, that those "years spent on the street" should count toward or be applied to the remainder of his sentence, we note that the purposes of parole and probation are for the rehabilitation of the criminal and are acts of grace to one convicted of a crime. Because parole and/or probation are less restrictive on the offender's freedom than penal incarceration, and are acts of grace to the offender, a violation of parole and/or probation has consequences such as no entitlement to credit against the offender's sentence for the time spent on probation or parole. See Bancroft v. Louisiana Department of Corrections, 635 So. 2d at 740 (citing State v. Gordon, 214 La. 822, 38 So. 2d 794, 795-796); Manuel v. Stalder, 2004-1920 (La. App.

1<sup>st</sup> Cir. 12/22/05), 928 So. 2d 24, 26-27. When an inmate is released on parole due to diminution of sentence and is subsequently reincarcerated for violating the terms of his parole, the person “shall be recommitted to the [D]epartment for the remainder of the original full term.” LSA-R.S. 15:571.5(C); Manuel v. Stalder, 928 So. 2d at 26-27.

Moreover, an offender released under parole supervision due to diminution of sentence and subsequently reincarcerated is not entitled to restoration of good time earned or accumulated prior to his release. Manuel v. Stalder, 928 So. 2d at 26. As correctly noted by the Commissioner, petitioner is not entitled to any good time earned prior to his release on parole as he utilized his prior good time to obtain his early release.

With reference to petitioner’s argument that he entered into a binding contract with the Department by signing the “Double Good Time Option and Approval Form,” this court has previously held that an offender’s entry into the good time credits program is only an option the offender can choose to exercise, which can result in his eligibility for early release, and is not a contract. See Bancroft v. Louisiana Department of Corrections, 635 So. 2d at 741.

Petitioner further argues that, in any event, the penalty portion of his armed robbery sentence precluded him from being subject to parole supervision because the penalty provision of his sentence precluded parole eligibility. In urging this argument, petitioner ignores the distinction that he was not released by the granting of parole, but, rather, by diminution of sentence with parole conditions. See Bancroft v. Louisiana Department of Corrections, 635 So. 2d at 740. On review, we note that petitioner’s penalty provision only precludes the Parole Board from consideration of early release on parole supervision. The “without benefit” provisions of his sentence do not preclude good time eligibility. Specifically, LSA-R.S. 15:571.5(A) provides that an offender

released because of diminution of sentence pursuant to earned good time credit is released as if on parole, and LSA-R.S. 15:571.5(B)(2) provides that such an offender shall be supervised in the same manner and to the same extent as offenders released pursuant to a decision rendered by the Parole Board. Thus, petitioner's argument, i.e., that the district court's decision was erroneous because the "without benefit" provisions of petitioner's sentence preclude good time eligibility, likewise fails.

### **CONCLUSION**

After thorough review of the record in its entirety, and considering the relevant law and jurisprudence, we find no merit to petitioner's assignments of error. Accordingly, the June 21, 2012 judgment of the district court is hereby affirmed in accordance with Uniform Rules, Louisiana Courts of Appeal, Rule 2-16.1(B). Costs of this appeal are assessed to the petitioner/appellant, Kip London.

**AFFIRMED.**