

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1719

OTIS R. MCKINLEY

VERSUS

WARDEN/LYNN COOPER,
AVOYELLES CORRECTIONAL CENTER

DATE OF JUDGMENT: APR 26 2013

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 606,116, DIVISION G, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TIMOTHY E. KELLEY, JUDGE

Otis R. McKinley
Cottonport, Louisiana

Plaintiff-Appellant
Pro Se

William L. Kline
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
Louisiana Department of Corrections

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

Disposition: AFFIRMED.

KUHN, J.,

Appellant, Otis R. McKinley, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals the district court's dismissal, without prejudice, of his "Petition for Civil Writ of Habeas Corpus Ad Testificandum" for failure to state a cause of action. We affirm.¹

PROCEDURAL BACKGROUND

On October 18, 2011, McKinley filed a petition in district court seeking a writ of habeas corpus in which he alleged DPSC had inaccurately calculated his release date based on an erroneous determination that he was ineligible for good time credits. He prayed therein for the issuance of a writ of habeas corpus ordering his immediate or speedy release.

Pursuant to the requirements of La. R.S. 15:1178 and 15:1188, McKinley's petition was screened by a commissioner prior to DPSC being served.² After screening, the commissioner issued a report concluding that McKinley's complaint was, in fact, a time computation claim involving eligibility for good time. Since the Corrections Administrative Remedy Procedure (CARP), La. R.S. 15:1171 *et seq.* is the exclusive remedy by which an inmate may challenge time computations relative to good time, the commissioner recommended that McKinley's request for habeas corpus relief be dismissed because his petition failed to state a cause of action for

¹ McKinley filed a motion for an *en banc* hearing before this Court based on his assertion that he was denied a fair hearing in district court. Uniform Rules, Courts of Appeal, Rule 1-5, provides that "[w]hen authorized by law, or when the court deems it necessary to promote justice or expedite the business of court, the court may sit ... *en banc*." However, McKinley has cited no law, nor are we aware of any law, that would require an *en banc* rehearing in this case. Further, to sit *en banc* would not "expedite the business of court" in this case, but would, in fact, delay its resolution. Finally, no showing has been made that an *en banc* is necessary herein in order to "promote justice." Accordingly, the motion for *en banc* hearing is denied.

² The office of the 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 prisoners. La. R.S. 13:713(A).

such relief.³ Under CARP, after exhausting his administrative remedies (ARP) with DPSC, McKinley should have next filed a petition for judicial review in the district court seeking review of the agency's denial of relief. Noting that McKinley had exhausted his available administrative remedies, the commissioner recommended that McKinley be given an opportunity to amend his petition to seek judicial review of the denial of his ARP pursuant to La. R.S. 15:1177. See La. C.C.P. art. 934.

In accordance with the commissioner's recommendation, the district court rendered judgment on January 23, 2012, dismissing McKinley's request for habeas corpus relief pursuant to an exception of no cause of action, raised on the court's own motion. The judgment granted McKinley thirty days to amend his petition to seek judicial review under La. R.S. 15:1177. However, McKinley declined to amend his petition.

On May 15, 2012, the commissioner issued a second report recommending that this matter be dismissed, without prejudice, since McKinley continued to assert that he was entitled to habeas corpus relief and did not utilize the opportunity given to seek judicial review of DPSC's time computation relative to his good time eligibility. McKinley objected to the commissioner's May 15, 2012 recommendation, reiterating his prayer for habeas corpus relief and arguing that the district court lacked authority to treat his petition for habeas corpus as a request for judicial review. Thereafter, by judgment dated June 13, 2012, the district court dismissed McKinley's petition, without prejudice, and at his cost due to his failure to amend his petition to state a cause of action. McKinley now appeals, complaining that the district court violated his right to due process by failing to rule

³ Louisiana Revised Statutes 15:1178(D) and 15:1188(A), authorize a district court to dismiss a petition that, upon screening, it determines fails to state a cause of action. Additionally, La. C.C.P. art. 927(B) authorizes a district court to notice on its own motion the failure of a petition to state a cause of action.

on the merits of his request for habeas corpus relief.

DISCUSSION

Although McKinley's petition is captioned as a petition for a writ of habeas corpus, the claim he sets forth actually raises an issue of time computation, which must be pursued through CARP. CARP is the exclusive remedy by which an inmate may challenge DPSC's time computations relative to good time, even where an inmate incorrectly labels his claim as a writ of habeas corpus. La. R.S. 15:1171(B); La. R.S. 15:1177(D); *Ferrington v. Louisiana Board of Parole*, 03-2093 (La. App. 1st Cir. 6/25/04), 886 So.2d 455, 457, writ denied, 04-2555 (La. 6/24/05), 904 So.2d 741. Thus, McKinley cannot state a cause of action for habeas corpus relief predicated on his good time eligibility claim; he must pursue this claim through CARP. After his ARP complaining of his ineligibility for good time was denied by DPSC, the proper remedy was for McKinley to seek judicial review of that denial pursuant to La. R.S. 15:1177. However, when given the opportunity to amend his petition to seek judicial review, he refused to do so. In fact, not only did McKinley fail to amend his petition, he objected to the district court considering his petition as a request for judicial review.

Accordingly, after a thorough review of the record of these proceedings, we find no error in the judgment of the district court dismissing McKinley's claims, without prejudice. McKinley's petition complaining of a time computation relative to good time failed to state a cause of action for habeas corpus relief, since time computation claims must be pursued through CARP. Moreover, although given thirty days to do so, he expressly declined to amend his petition to seek judicial review pursuant to La. R.S. 15:1177. Given the circumstances, the district court properly dismissed this matter. See La. C.C.P. art. 934.

CONCLUSION

For the above reasons, the June 13, 2012 judgment of the district court dismissing McKinley's petition, without prejudice, is affirmed. All costs of this appeal are assessed against appellant, Otis R. McKinley.

AFFIRMED.