

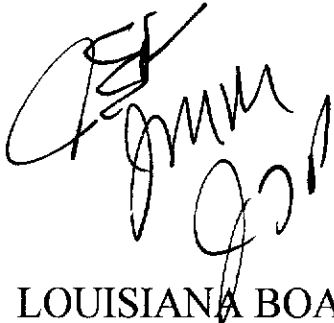
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 2053



EDDIE GENE EVANS

VERSUS

LOUISIANA BOARD OF PAROLE, LOUISIANA ATTORNEY
GENERAL JAMES "BUDDY" CALDWELL

DATE OF JUDGMENT: JUN 07 2013

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 612,652, SECTION 23, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE WILLIAM A. MORVANT, JUDGE

Eddie Gene Evans
Portage, WI

Plaintiff-Appellant
In Proper Person

William Kline
Baton Rouge, Louisiana

Counsel for Defendants-Appellees
Louisiana Board of Parole, Louisiana
Attorney General James "Buddy"
Caldwell

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

Disposition: AFFIRMED.

KUHN, J.,

Petitioner-appellant, Eddie Gene Evans, an inmate serving a sentence for armed robbery in the custody of the Wisconsin Department of Corrections, appeals a district court screening judgment that dismissed without service his demands against the Louisiana Board of Parole and Pardons (Parole Board) and James “Buddy” Caldwell, Attorney General of Louisiana, without prejudice, for failure to state a cause of action and/or lack of jurisdiction.¹ We affirm.

Appellant committed the offense of armed robbery with threat of force in Wisconsin while he was on parole for a prior Louisiana armed robbery conviction. Because the Wisconsin conviction violated the conditions of his parole, the Louisiana Department of Public Safety and Corrections, Board of Parole (the Department) placed a detainer with Wisconsin prison officials. Subsequently, appellant filed a petition styled as a “Petition for Writ of Habeas Corpus” in the 19th Judicial District Court. Numerous attachments were attached to and incorporated into the petition by reference. Although the precise nature of appellant’s claims is difficult to discern due to the rambling nature of the petition, it appears he is either seeking to have the detainer placed by Louisiana corrections officials removed or complaining of the alleged revocation of his Louisiana parole or, alternatively, seeking credit on his Louisiana sentence for the jail time he is serving in Wisconsin.

¹ Louisiana Revised Statutes 15:1188A provides, in pertinent part, that:

The court shall review, before docketing if feasible or, in any event, before service on the defendants, a petition in a civil action in which a prisoner seeks redress from a governmental entity.... On review, the court shall identify cognizable claims or **dismiss the petition ... if the petition ... fails to state a cause of action ... or fails to state a claim upon which relief can be granted.** (Emphasis added.)

See also La. C.C.P. art. 927(B) & La. R.S. 15:1178(D).

In considering whether a petition states a cause of action, a court must accept all well-pleaded facts in the petition as true. The function of the exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts of the pleading. *Everything on Wheels Subaru, Inc., v. Subaru South, Inc.*, 616 So.2d 1234, 1235 (La. 1993). Because it raises a question of law, an appellate court reviews an exception of no cause of action *de novo*. *Louisiana State Bar Association v. Carr and Associates, Inc.*, 08-2114 (La. App. 1st Cir. 05/08/09), 15 So.3d 158, 167, writ denied, 09-1627 (La. 10/30/09), 21 So.3d 292.

Regardless of whether appellant is seeking to have the detainer removed or complaining of the alleged revocation of his parole, his petition fails to state a cause of action. Despite appellant's allegations that his parole was revoked, a July 12, 2004 letter from the Department that is attached to the petition indicates no action will be taken to formally revoke appellant's parole until he is returned to the physical custody of the Department, which has not happened. Thus, the status of appellant's parole is unclear. However, we note that appellant has not alleged a specific decision by the Louisiana Board of Parole revoking his parole.

In any event, even if appellant's parole actually has been revoked, he has raised no valid basis for challenging such revocation. Louisiana Revised Statutes 15:574.10 provides that a parolee's parole "shall" be revoked when a person on parole commits an offense in another state that would be a felony if committed in Louisiana. The offense appellant committed while on parole in Wisconsin (armed robbery with threat of force) clearly would constitute a felony if committed in Louisiana. Compare La. R.S. 14:64 & 64.1 and Wis. Stat. 943.32(2). Moreover, appellant admitted he was convicted of this offense. Therefore, the Board of Parole is without discretion in this matter. Under La. R.S. 15:574.10, appellant's

parole is subject to mandatory revocation due to his felony conviction in Wisconsin while he was on parole. *Lay v. Louisiana Parole Board*, 98-0053 (La. App. 1st Cir. 4/1/99), 741 So.2d 80, 87, writ denied, 99-1959 (La. 11/12/99), 749 So.2d 657.

Similarly, because the revocation of appellant's parole is mandatory, his petition also sets forth no basis for removal of the Louisiana detainer. Further, the attachments to appellant's petition include a "detainer cancellation" from the Wisconsin Department of Corrections, dated April 24, 2012, reflecting that the detainer placed against appellant "by the Louisiana DOC has been withdrawn." Accordingly, to the extent that appellant is seeking removal of the Louisiana detainer, it appears his claims are meritless, as well as moot.

Finally, appellant's claim that he is entitled to credit on the remainder of his Louisiana sentence for the time served in Wisconsin raises a time computation issue. Such complaints must initially be addressed administratively within the Department. See La. R.S. 15:1171(B); *Williams v. Creed*, 07-0614 (La. App. 1st Cir. 12/21/07), 978 So.2d 419, 422, writ denied, 08-0433 (La. 10/2/09), 18 So.3d 111. Thus, district courts do not have original jurisdiction to consider such claims. Additionally, it appears this claim is premature since appellant has not yet completed his sentence in Wisconsin.

For the above reasons, the judgment of the district court dismissing appellant's claims is affirmed. All costs of this appeal are assessed to appellant.

AFFIRMED.