

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 0440

GLENN HILL

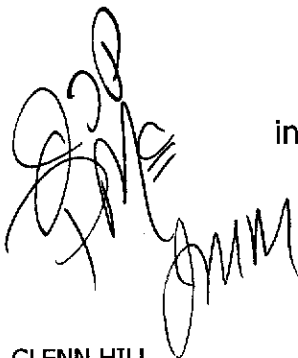
VERSUS

LOUISIANA DEPARTMENT OF CORRECTIONS

Judgment rendered **NOV 01 2013**

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Appealed from the  
19<sup>th</sup> Judicial District Court  
in and for the Parish of East Baton Rouge, Louisiana  
Trial Court No. 611,483  
Honorable Wilson Fields, Judge



GLENN HILL  
ANGIE, LA

DEBRA A. RUTLEDGE  
BATON ROUGE, LA

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PLAINTIFF-APPELLANT  
IN PROPER PERSON

ATTORNEY FOR  
DEFENDANT-APPELLEE  
LOUISIANA DEPARTMENT OF  
CORRECTIONS

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**BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.**

**PETTIGREW, J.**

Glenn Hill (Hill), an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the Department), appeals a district court judgment, dated January 8, 2013, which adopted the Commissioner's report that recommended that the Department's decision to maintain the charges and sentence imposed on the inmate be affirmed, finding sufficient evidence that the inmate violated prison rule number 21E (Aggravated Sex Offense), that he was provided due process, and that the decision was not arbitrary or manifestly erroneous. After a thorough review of the record and the arguments presented by Hill, we find no error below and affirm.

On November 10, 2011, Officer Ashley Whaley (Ofc. Whaley) observed Hill seated on a toilet and acting in a suspicious manner. Upon further observation, Ofc. Whaley saw that Hill was masturbating, in violation of a rule prohibiting such behavior in the view of staff or non-incarcerated persons. Ofc. Whaley verbally ordered Hill to discontinue his actions and go to the door, with which Hill complied. Following the incident, Hill was charged with a violation of prison rule 21E – Aggravated Sex Offense. Hill was provided a hearing before the disciplinary board (the Board), where he was accompanied by inmate counsel, during which evidence was presented, consisting of the officer's eyewitness testimony and written documentation of the incident, as well as the video recording from cameras located in the area of the offense. During the hearing, Hill denied that the incident occurred. Following the hearing, the Board found him guilty as charged and imposed a penalty of administrative segregation (being moved to the working cell block) and the loss of thirty days of good time. The Board noted that due to the angle of the video recording, Hill could not actually be seen with his penis in his hand; however, the Board nonetheless concluded that Ofc. Whaley's eyewitness account together with the video's depiction of Hill's arm and shoulder movements provided sufficient evidence to find Hill guilty as charged.

The Department Secretary, James LeBlanc, agreed with the Board, rendering its decision final. Hill then filed a petition for judicial review of the final agency decision in the Nineteenth Judicial District Court (19<sup>th</sup> JDC); it was assigned to a commissioner for

evaluation and to make a recommendation to the district court judge.<sup>1</sup> The commissioner reviewed the record and agreed with the Secretary's decision, finding it was supported by ample evidence, and recommended that it be affirmed. The trial court then adopted the Commissioner's report and affirmed the Department's final decision, finding that it was not arbitrary or manifestly erroneous or in violation of Hill's rights, and dismissing the request for judicial review with prejudice. This appeal by Hill followed.

On appeal, Hill complains that he was denied his due process rights and that the evidence was insufficient to find him guilty of the offense because the video recording, which the Board had noted did not actually show the exact location of his hands, was no longer available and was not included in the evidence presented. (In response to Hill's earlier request that the video be provided, he was notified in writing that the video was no longer available, having been purged according to Department rules.) We find Hill's argument lacks merit.

At the hearing before the Board, the evidence consisted of the testimony of Ofc. Whaley's eyewitness observations, the video that recorded the incident, and Hill's denial that the incident took place. On appeal to the Department Secretary and to the Commissioner, the evidence was the same, except the video was not available. The Commissioner was aware that the Board's decision was based on the testimony as well as the video. The Commissioner made a credibility determination based on the evidence presented, and obviously believed Ofc. Whaley's account, and rejected Hill's denial. The Commissioner also found that the Department's decision was neither arbitrary nor manifestly erroneous. Those findings are owed great deference and cannot be overturned in the absence of manifest error.

The trial court adopted the Commissioner's report, and we find no manifest error in the trial court's judgment.

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<sup>1</sup> The office of commissioner of the 19th JDC 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. The commissioner's written findings and recommendations are submitted to a district court judge, who may accept, reject, or modify them. La. R.S. 13:713(C)(5).

Accordingly, we find no error in the trial court's adoption of the Commissioner's recommendation, affirming the Department's decision, affirming the Board's finding Hill guilty as charged and that the penalty imposed therefor was proper. We issue this memorandum decision in accordance with Uniform Rules-Court's of Appeal, Rule 2-16.1B.

**AFFIRMED.**