

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0653

TERRY MONTGOMERY

VERSUS

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS, AND
JAMES LeBLANC**

Judgment Rendered: FEB 18 2014

On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. 613,944

Honorable William Morvant, Judge Presiding

Terry Montgomery
Avoyelles Correctional Center
Cottonport, Louisiana

Plaintiff/Appellant
In Proper Person

William L. Kline
Baton Rouge, Louisiana

Counsel for Defendants/Appellees
The Louisiana Department of
Public Safety and Corrections and
James LeBlanc

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Terry Montgomery, an inmate in the custody of the Department of Public Safety and Corrections, appeals a district court judgment that dismissed his petition for judicial review. On appeal, Montgomery contends that he is entitled to additional presentence jail credits because there is an error in the master prison record. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Montgomery sought, through the provisions of the Corrections Administrative Remedy Procedure Act,¹ presentence jail credits for the time he allegedly served from September 28, 2008, until he was sentenced on January 20, 2010 (479 days) for attempted simple kidnapping and attempted simple robbery under East Baton Rouge Parish docket number 1208222. Montgomery prayed that the presentence jail credit be applied to both sentences, which sentences had been ordered to run consecutively.

Because the master prison record reflected that Montgomery bonded out between October 30, 2008 and August 24, 2009, the Department had credited Montgomery's first conviction for attempted simple kidnapping with 181 days of presentence jail credit. The Department denied Montgomery any credits on count two, attempted simple robbery, because the sentences were imposed consecutively. Montgomery was denied relief in the first and second step of the administrative process and he filed a petition for judicial review with the Nineteenth Judicial District Court.

In his petition for judicial review, Montgomery asserted that the record should be amended to reflect credit for time served on both counts from September 28, 2008 through January 20, 2010, or 479 days. After the petition for judicial review was filed, the Department reconsidered its decision, and amended its decision to award petitioner an additional 181 days of presentence

¹ LSA-R.S. 15:1171, *et seq.*

jail credit served on count two.² Because of the Department's actions, a Commissioner recommended denying the petition for judicial review as moot.³ The Commissioner also recommended that all costs associated with the judicial review be paid by the Department given that the Department's initial denial prompted the judicial review.

In response to the Commissioner's report, Montgomery contended that there was an error in the Department's calculation and that he was entitled to credit for time served on both convictions from September 28, 2008 through January 20, 2010, or a total of 479 days. Montgomery asserted that the master prison record was in error as he had never bonded out prior to his sentences.

The district court, in accord with the Commissioner's recommendation, subsequently dismissed the matter with prejudice as moot, but assessed all costs against the Department. The district court indicated that, alternatively "should a higher court find the issue of presentence credits is not subject to dismissal as moot, the Court finds that the Department's decision is affirmed as not manifestly erroneous and this appeal is dismissed with prejudice at Department's costs."⁴

Montgomery has appealed, asserting that the master prison record erroneously reflects that he bonded out between October 30, 2008 and August 24, 2009.

DISCUSSION

Montgomery urges that the master prison record is incorrect insofar as he remained in prison from the time of his arrest on September 28, 2008 until he

² In granting the credit, the Department noted that a review of the defendant's sentencing minutes did reflect that the court gave a specific order for the offender to receive credit on both charges although the sentences were run consecutive.

³ The office of the Commissioner of the Nineteenth Judicial District Court was created by LSA-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 judge, who may accept, reject, or modify them. LSA-R.S. 13:713(C)(5).

⁴ While it is not clear whether the district court's judgment addressed Mr. Montgomery's assertion that the master prison record was incorrect, when a judgment is silent as to any part of a demand or any issue that was litigated, that issue or demand is deemed rejected. See **Best Fishing, Inc. v. Rancatore**, 96-2254 (La.App. 1 Cir 12/29/97), 706 So.2d 161, 163.

accepted a plea deal on January 20, 2010. Accordingly, Montgomery requests that he be awarded additional presentence jail credit for time served on both convictions between October 30, 2008 and August 24, 2009, or an additional 298 days.

Montgomery has consistently maintained throughout the course of these proceedings that he never bonded out of prison. While Montgomery may be entitled to additional credits had he remained incarcerated, the master prison record introduced into the record reflects that Montgomery bonded out in October 30, 2008. Although Montgomery posits that "[t]his is not supported by the factual record," Montgomery has pointed to nothing in the record that refutes the master prison record. Because the master prison record has not been refuted, we find no error in the Department's calculations.

For the foregoing reasons, the November 26, 2012 district court judgment is affirmed. Costs of this appeal are assessed to the petitioner, Terry Montgomery.

AFFIRMED.