

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0654

DERRICK D. DAVIS

VERSUS

JAMES LEBLANC, SECRETARY
DEPARTMENT OF CORRECTIONS, ET AL

DATE OF JUDGMENT: DEC 27 2013

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 612,771, SEC. 22, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TIMOTHY E. KELLEY, JUDGE

Derrick D. Davis
Winfield, Louisiana

Pro Se

William L. Kline
Baton Rouge, Louisiana

Counsel for Defendants-Appellees
James LeBlanc and the Louisiana
Department of Safety and Corrections

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

Disposition: AFFIRMED.

Handwritten signature and initials in black ink, appearing to be 'T.M.H.' and 'D.D.'.

KUHN, J.

Petitioner-appellant, Derrick D. Davis, an inmate incarcerated at the Winnfield Correctional Facility, appeals the district court judgment, which dismissed his pleading, entitled “Petition for Judicial Review,” without service on defendants-appellees, James LeBlanc in his capacity as Secretary for the Department of Safety and Corrections (DPSC) and DPSC, and ordered assessment of a “strike” under the Prison Litigation Reform Act.¹ We affirm.

In this appeal, petitioner specifically requests that this court “verify the authority of [DPSC’s] custody only,” expressly stating that he is not “contesting his conviction” or seeking relief to “set aside sentence [or] commute good time” and, therefore, his pleading is not a petition for judicial review of an administrative remedy procedure or a complaint regarding the illegality of his sentence. He also does not make any claims for damages as he did before the district court.

Petitioner claims entitlement to a writ of habeas corpus for an alleged illegal detainment by the DPSC, averring that he was not “indicted” and, thus, was not legally committed to DPSC.² La. C.Cr.P. art. 892, entitled “Post-sentence statement by sheriff; accompanying documents” provides:

A. The sheriff shall prepare a statement indicating the amount of time a defendant has spent in custody prior to conviction when such defendant is committed to [DPSC], sentenced for a term of one year or more to any penal institution, or ordered committed to any mental institution or mental hospital. The sheriff shall retain a copy of the

¹ See La. R.S. 15:1181-1191.

² Although a copy of what appears to be a bill of information issued by the Ninth Judicial District bearing a partially legible file stamp and indicating “File No.:105-1879” under the signature of an assistant district attorney for the Ninth Judicial District is contained in the district court record, that document is not certified. As noted by the Commissioner an “indictment” includes a bill of information. See La. C.Cr.P. art. 461. Reading La. C.Cr.P. art. 892 *in pari materia* with La. C.Cr.P. art. 461, and assuming *arguendo* that the copy of what appears to be a bill of information were a valid basis for his conviction, petitioner has failed to show entitlement to relief on this basis. See La. C.Cr.P. art. 382A (a prosecution for an offense punishable by death, or for an offense punishable by life imprisonment, shall be instituted by indictment by a grand jury; all other criminal prosecutions may be instituted by affidavit or information) and La. R.S. 14:43.1C (sentences for sexual battery do not include punishment by death or life imprisonment).

statement and submit the original to the officer in charge of the institution or department to which the defendant is sentenced.

B. (1) When a sheriff's statement is required pursuant to Paragraph A of this Article, the clerk of court shall also prepare the following documents:

(a) A copy of the indictment under which the defendant was convicted.

(b) A copy of the sentence as recorded in the minutes of the court.

(c) A copy of the Uniform Sentencing Commitment Order in the format authorized by the Louisiana Supreme Court which shall include the name and address of the judge, the district attorney, and the defense attorney who participated in the sentencing trial.

(2) The clerk shall retain a copy of the statement and documents and send the original to the officer in charge of the department or penal institution to which the defendant has been sentenced, where they shall be preserved. The documents, or copies thereof, shall be made available to the governor, the pardon board, and the parole committee.

C. All statements and documents required by this Article shall physically accompany any defendant when said defendant is transferred to a penal institution or a mental institution or mental hospital. Said documents and statements shall be tendered to the officer in charge of the institution at the time that the defendant is presented for admittance thereto.

D. Failure to comply with the provisions of this Article shall not affect the validity of a prosecution, conviction, or sentence.

Conceding on appeal that his original custody was lawful, petitioner suggests the failure of the Sheriff of Rapides (Sheriff) to deliver him to DPSC with a copy of the grand jury indictment makes his continued custody by DPSC unlawful, entitling him to habeas corpus relief. But according to the plain language of Subsection D, any failure by the Sheriff to comply with the provisions of Article 892 does not affect the validity of the conviction and sentence. Thus, Article 892 cannot form a basis for a habeas corpus claim.

Although petitioner did not challenge the assessment of a strike against him in this appeal, we expressly note that in light of the posture of his case before the

district court, we find no error in the assessment. See La. R.S. 15:1178, 1184, 1187, and 1188.

DECREE

For these reasons, the district court judgment is affirmed. Appeal costs are assessed against petitioner-appellant, Derrick D. Davis.

AFFIRMED.