

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 0656

ADRIAN LEWIS

VERSUS

Adrian Lewis
JAMES LEBLANC; N. BURL CAIN, WARDEN; TRENT BARTON – ADM.
MAJOR; DAVID ACKENBRAND – SOCIAL WORKER; DONALD
CAVALIER – CLASSIFICATION OFFICER; BARNETT BOEKER, MAJ.

Judgment rendered December 27, 2013.

James LeBlanc
Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 617,441
Honorable Kay Bates, Judge

ADRIAN LEWIS
ANGOLA, LA

WILLIAM KLINE
BATON ROUGE, LA

PRO SE
PLAINTIFF-APPELLANT

ATTORNEY FOR
DEFENDANT-APPELLEE
LOUISIANA DEPARTMENT OF
CORRECTIONS

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

PETTIGREW, J.

Petitioner, Adrian Lewis, an inmate in the custody of the Louisiana Department of Public Safety and Corrections ("DPSC"), appeals a judgment affirming DPSC's final agency decision rendered under Disciplinary Board Appeal No. LSP-2011-0401-W, imposing a strike against him and dismissing the claims alleged in his petition for judicial review for failure to state a cause of action. We affirm.

DISCUSSION

Lewis was convicted of violating Rule #3 (Defiance) and Rule #5 (Aggravated Disobedience) and was sentenced to 8 weeks loss of canteen privileges and 8 weeks loss of telephone privileges. After exhausting his administrative remedies, Lewis filed a petition for judicial review in the Nineteenth Judicial District Court. The matter was then referred to a commissioner for review pursuant to La. R.S. 15:1188.¹ A screening judgment by the district court dated February 8, 2013, adopted the written recommendation of the Commissioner, imposing a strike against Lewis and dismissing Lewis' complaint, with prejudice, for failure to state a cause of action. The Commissioner's screening report noted as follows:

In this case, the Petitioner appeals the Department's decision to reject his disciplinary appeal as untimely. The Petitioner states that he was found guilty in a disciplinary hearing on July 23, 2012, and that he appealed that decision on August 13, 2012. The Department's promulgated disciplinary rules state the following in regard to the time limitations on disciplinary appeals:

"The offender may appeal himself [or] through counsel or counsel substitute. *In any case, the appeal must be received by the [Warden] within 15 days of the hearing.*"

The Petitioner, by his own admission, and according to the date on his attached disciplinary (administrative) appeal, did not comply with the Department's regulation. He filed his appeal to the Warden on August 13, 2012, as stated in his petition and on his attached appeal to the Warden. The final agency decision and the Petitioner's statement in this appeal show that the disciplinary hearing was on July 23, 2012. The rules allowed him

¹ The offices of commissioner of the 19th Judicial District Court were created by La. R.S. 13:711 to, among other matters, hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. La. R.S. 13:713(A). The district judge "may accept, reject, or modify in whole or in part the findings or recommendations made by the commissioner and also may receive further evidence or recommit the matter to the commissioner with instructions." La. R.S. 13:713(C)(5).

until August 7th to have his appeal in the Warden's office. Clearly, he did not even sign it until August 13, by his own admissions and by the record attached. Therefore, the Department's decision to reject the appeal as untimely is correct and in accord with its rules, and the facts stated in the petition, even if considered true, do not state a cause or right of action for relief by this Court.

In addition and alternatively, the final agency decision shows that the Petitioner did not suffer an "atypical" penalty that would present a "substantial right" violation and thus confer appellate jurisdiction on this Court. The only penalties imposed were temporary loss of canteen (store) privileges and temporary loss of phone privileges. Both have been long since served and neither raises a substantial right violation. Therefore, this court has no authority to reverse the decision herein even if the Court found that it was unreasonable—which clearly, it is not.

In sum, this appeal is frivolous and offers no basis for relief of any kind. It does not state a cause of action as the decision is based on promulgated rules that the Petitioner did not abide by, according to his own allegations and exhibits. Alternatively, the penalty imposed prohibits this Court from having the authority to reverse the decision because there is no substantial right violation presented. For either reason, this Court is required to dismiss this appeal. And because it has no basis in law or fact, I find that it is frivolous and suggest that this Court should impose a PLRA [Prison Litigation Reform Act] Strike to discourage future petitions of this nature.

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After careful consideration of the appellate petition and attachments thereto, as well as the law applicable, for reasons stated, I recommend that this appeal be dismissed without service at the Petitioner's cost, in accordance with the R.S. 15:1178; 1188 and [1177A]. In addition, because it does not state a cause of action for any relief, and because it is frivolous, I also recommend that the Court impose a "**STRIKE**" in its judgment in accordance with PLRA (R.S. 15:1184-88) and that the Clerk of Court be ordered therein to record the "**strike**" under the Petitioner's name, DOC number and docket number, for reference in any future lawsuits filed by the Petitioner.

Alternatively, and only in the event that the Court finds the petition does state a cause of action, I recommend that the appeal be dismissed because it does not raise a substantial right violation that would allow this Court to offer any relief, pursuant to R.S. 15:1177A. [Footnotes omitted.]

This appeal by Lewis followed. After a thorough review of the record, in consideration of Lewis' arguments on appeal, and applying the relevant law and jurisprudence, we find no error of law or abuse of discretion by the district court in adopting, as its own, the commissioner's report. Thus, we affirm the February 8, 2013 judgment of the district court and assess appeal costs against petitioner, Adrian Lewis.

AFFIRMED.