

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 0657

TANYA WHITEHEAD

VERSUS

JIM ROGERS, WARDEN, AND SECRETARY JAMES LEBLANC,
DEPARTMENT OF CORRECTIONS

Judgment Rendered: DEC 27 2013

TMH
met
JEK by TMH

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 610806

Honorable Timothy E. Kelley, Judge Presiding

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Tanya Whitehead
St. Gabriel, LA

Plaintiff-Appellant,
In Proper Person

Debra A. Rutledge
Baton Rouge, LA

Attorney for Defendant-Appellant,
James M. LeBlanc, Secretary,
Louisiana Department of Public
Safety and Corrections

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

HIGGINBOTHAM, J.

This appeal involves a claim for additional “good time” eligibility by Tanya Whitehead, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the Department). Whitehead originally filed a petition in the Nineteenth Judicial District Court seeking judicial review of the Department’s denial of her request that her good time credits be re-calculated pursuant to La. R.S. 15:571.3(B)(1)(a), as amended and reenacted by 2010 La. Acts, No. 649.¹ She maintains that the 2010 statutory amendment permits her to earn good time diminution of her sentence at a rate of 35 days for every 30 days served in actual physical custody.

Whitehead’s claim for additional good time eligibility was initially referred to a commissioner for review, who recommended that the Department’s denial of Whitehead’s claim be affirmed, as Whitehead was misinterpreting the law.² After receiving the commissioner’s recommendation, the district court conducted a *de novo* review of the record and adopted the commissioner’s recommendation. Consequently, the district court signed a final judgment dismissing Whitehead’s suit on November 21, 2012, finding that the Department’s decision was in accord with the statutory mandates of La. R.S. 15:571.3 as amended in 2010.

¹ Inmates who allege an error in computation of good time credits are required to pursue the claim through a Corrections Administrative Remedy Procedure (CARP). **Owens v. Stalder**, 2006-1120 (La. App. 1st Cir. 6/8/07), 965 So.2d 886, 888 n.5. Louisiana Revised Statutes 15:1171(B) grants the Department the authority to adopt administrative proceedings to receive, hear, and dispose of all inmate complaints and grievances. The statute also provides that such administrative proceedings are to provide the exclusive remedy to the inmate for those complaints. **Owens**, 965 So.2d at 888 n.4. Whitehead exhausted her administrative remedy before filing her petition in the district court.

² The office of the commissioner of the Nineteenth Judicial District Court 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 inmates. **Owens**, 965 So.2d at 888 n.6. The commissioner’s written findings and recommendation are submitted to a district court judge, who may accept, reject, or modify them. La. R.S. 13:713(C)(5).

Whitehead then filed an appeal with this court, maintaining that her good time credits should be re-calculated on a 35-for-30 basis.³ Whitehead's argument is based on the 2010 amended language of La. R.S. 15:571.3(B)(1)(a), providing in pertinent part:

Except as provided in Paragraph (B)(2) of this Section, **every inmate** in the custody of the [D]epartment who has been convicted of a felony, **except an inmate convicted a second time of a crime of violence** as defined by [La.] R.S. 14:2(B), . . . may earn . . . a diminution of sentence by good behavior and performance of work or self-improvement activities, or both, to be known as "good time." . . . **The amount of diminution of sentence allowed under the provisions of this Section shall be at the rate of thirty-five days for every thirty days in actual custody[.]** (Emphasis added.)

Whitehead was in the custody of the Department for a conviction on one count of manslaughter, which is undisputedly a crime of violence as defined by La. R.S. 14:2(B). However, Whitehead contends that because she has never been convicted of a second crime of violence, she is entitled to the 35-for-30 calculation formula in the 2010 amended version of the statute.

When reviewing the district court's judgment in this case, we do not owe any deference to the district court's factual findings or legal conclusions. **Goodin v. Secretary, Dept. of Corrections**, 2011-0673 (La. App. 1st Cir. 11/9/11), 79 So.3d 1076, 1079. Upon our *de novo* review, we find that the judgment of the district court was correct and should be upheld. Our conclusion is based on another section of the 2010 amended version of the statute at issue, La. R.S. 15:571.3(B)(1)(b), which specifically excludes first time offenders of violent crimes from the benefit of the 35-for-30 diminution calculation. That section of the statute provides as follows:

³ Louisiana Revised Statutes 15:1177(A)(10) provides that an aggrieved party may appeal a final judgment of the district court to the appropriate court of appeal. Whitehead initially applied for a supervisory writ, which this court granted for the limited purpose of remanding the case to the district court with instructions to grant Whitehead an appeal. See **Whitehead v. Louisiana Dept. of Public Safety and Corrections**, 2012 CW 2117 (La. App. 1st Cir. 1/28/13)(unpublished).

(b) The provisions of Subparagraph (a) of this Paragraph shall be applicable to persons convicted of offenses on or after January 1, 1992 and who are not serving a sentence for the following offenses:

- (i) A sex offense . . . ,
- (ii) A crime of violence as defined in [La.] R.S. 14:2(B).
- (iii) Any offense which would constitute a crime of violence as defined in [La.] R.S. 14:2(B) . . . , regardless of the date of conviction.

La. R.S. 15:571.3(B)(1)(b). (Emphasis added.) The two sections of the statute are clear and unambiguous, and they must be read *in pari materia* along with the next section, (B)(2), which is expressly referenced in section (B)(1)(a) and further limits inmates who are first time offenders of violent crimes (as defined by La. R.S. 14:2(B)) to earning good time credits at a rate of 3-for-17 days in actual custody. See La. R.S. 15:571.3(B)(2).

For the stated reasons, we affirm the district court's judgment upholding the Department's denial of Whitehead's request for a recalculation of her good time credits and dismissing her suit with prejudice. All costs of this appeal are assessed to the appellant, Tanya Whitehead.

AFFIRMED.