

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT**

NO. 2013 CA 0926

JAMES BURKS

VERSUS

STATE OF LOUISIANA

Judgment Rendered: December 27, 2013

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**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. C608234**

The Honorable William A. Morvant, Judge Presiding

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**James Burks
Cottonport, Louisiana**

**Plaintiff/Appellant
Pro Se**

**William L. Kline
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellee
James M. LeBlanc, Secretary
Department of Public Safety and
Corrections**

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

THERIOT, J.

Appellant, James Burks, seeks reversal of the judgment rendered in the Nineteenth Judicial District Court (19th JDC) which upheld the denial of administrative relief by the Department of Public Safety and Corrections (DPSC). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Burks was sentenced on July 6, 1987 to serve 25 years at hard labor for his conviction of aggravated burglary. He was released on parole on February 1, 2000. At the time of his release, the actual time Burks had served in prison was computed as 13 years, 3 months, and 4 days, leaving 11 years, 8 months and 27 days remaining on his sentence. His full term was computed to expire on October 28, 2011.

While on parole, Burks attended the Blue Walters rehabilitation program, in which he earned a credit of 63 days. Burks was arrested for a parole violation on May 17, 2004, and his parole was revoked on June 24, 2004. He served another 5 years, 11 months, and 15 days before being released on February 28, 2010, leaving 5 years, 9 months, and 12 days remaining on his sentence. The full term release date was recomputed to December 10, 2015.

Burks was arrested for a new felony offense on August 5, 2010 and convicted of second degree battery on July 13, 2011. He was sentenced to 5 years at hard labor, to run consecutively with the remainder of his parole. As this was his second conviction for a crime of violence, he was ineligible to receive good time credit on the sentence for second degree battery. He was eligible for good time credit for his parole violation sentence.

Burks filed an administrative remedy procedure (ARP) with DPSC, complaining that his full term release date had been illegally extended from

October 28, 2011 to December 10, 2015. DPSC denied both steps of the ARP, claiming its time computations were correct. Burks filed for judicial review with the 19th JDC. The Commissioner for the 19th JDC issued a stay and remand order to DPSC, citing that Burks's claim and DPSC's response were unclear as to pertinent release dates and disputed issues. DPSC issued an amended second response that included all dates and time computations relative to Burks's complaint.

Upon reviewing the amended second response, the Commissioner found the computation of time by DPSC to be correct. The trial court adopted the Commissioner's report and dismissed Burks's appeal with prejudice on March 21, 2013. Burks filed the instant appeal.

ASSIGNMENT OF ERROR

Burks's sole assignment of error is that DPSC's amendment to its second step response was illegal and an abuse of discretion and, therefore, the 19th JDC erred in affirming DPSC's denial of his ARP.

STANDARD OF REVIEW

Louisiana Revised Statutes 15:1177 sets forth the appropriate standard for judicial review of administrative decisions by DPSC and limits judicial review to issues presented in the petition for judicial review and the administrative remedy request. *McCoy v. Stalder*, 1999-1747, pp. 6-7 (La. App. 1 Cir. 9/22/00), 770 So.2d 447, 451. Furthermore, a reviewing court may reverse or modify the administrative decision only if substantial rights of the appellant have been prejudiced because the administrative decisions or findings are (1) in violation of constitutional or statutory provisions, (2) in excess of the statutory authority of the agency, (3) made upon unlawful procedure, (4) affected by other error of law, (5) arbitrary, capricious or characterized by abuse of discretion, or (6) manifestly erroneous in view of

the reliable, probative substantial evidence on the whole record. *Id.*; La. R.S. 15:1177(A)(9).

DISCUSSION

Burks and DPSC are not in dispute about any facts or dates in this case, other than the date of his full term release from his original sentence. Burks has not provided any statutory or jurisprudential support of his claim that his full term release date has been illegally extended. The amended second response by DPSC is not an abuse of discretion or an illegal extension of Burks's sentence, as it is merely a clarification of already existing facts and made no substantive change to its original second response. The 19th JDC had legal authority to request this clarification to make a proper ruling in its judicial review. See La. R.S. 15:1177(A)(4). Burks's only legal argument is that La. R.S. 15:571.5(C) requires that he serve whatever time remains on his original sentence from his first release on February 1, 2000. However, this is a misstatement of the law.

Louisiana Revised Statutes 15:571.5(C) was amended in 2010 to read as follows:

If such person's parole is revoked by the parole committee for violation of the terms of parole, the person shall be recommitted to [DPSC] for the remainder of the original full term, subject to credit for time served for good behavior while on parole.

The phrase "subject to credit for time served for good behavior while on parole" was added by La. Acts 2010, No. 792, § 1, and does not apply retroactively to Burks's revocation in 2004, as it is a substantive change in the law. See *Rochelle v. LeBlanc*, 2010-1901, p. 6 (La. App. 1 Cir. 5/6/11), 65 So.3d 240, 243. Burks has been eligible for good time credit only since the amendment became effective on August 15, 2010.

Burks's full term release date would have remained October 28, 2011 had he never violated his parole or committed another offense. Because of his parole violation in 2004, Burks served another 5 years, 11 months, and 15 days in prison until being released on February 28, 2010. DPSC calculated that release date taking into consideration the credit for time served following his arrest and his 63 days credit from the Blue Walters rehabilitation program. Subtracting the time he served on the parole violation from the remaining 11 years, 8 months, and 27 days owed on the original sentence left 5 years, 9 months, and 12 days still owed. Calculated from his release on February 28, 2010, his full term release date changed to December 10, 2015. The assignment of error is without merit.

CONCLUSION

Upon reviewing the entire record, we find the time calculations of DPSC to be correct and not in violation of La. R.S. 15:1177(A)(9). The 19th JDC had the legal authority to order DPSC to issue an amended second response to the ARP. While Burks's full term release date on his parole violation is December 10, 2015, on which he is now eligible to receive good time credit, DPSC and the 19th JDC are both correct that any credit he receives cannot count toward his consecutive five year sentence for second degree battery.

DECREE

The judgment of the 19th JDC to dismiss with prejudice James Burks's petition for judicial review is affirmed. All costs of this appeal are assessed to the appellant, James Burks.

AFFIRMED.