

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 1355

BOBBY PARKER

VERSUS

Jaw
WAW
ng. LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS, JERRY GOODWIN, WARDEN

Judgment Rendered: MAR 21 2014

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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. C601369

The Honorable Wilson Fields, Judge Presiding

* * * * *

Bobby Parker
Homer, Louisiana

Plaintiff/Appellant,
In Proper Person

Susan Wall Griffin
Baton Rouge, Louisiana

Attorney for Defendant/Appellee,
Louisiana Department of Public
Safety and Corrections

* * * * *

BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

CRAIN, J.

Bobby Parker, an inmate in the custody of the Louisiana Department of Public Safety and Corrections, appeals a judgment dismissing his petition for judicial review with prejudice. We affirm the judgment.

FACTS AND PROCEDURAL HISTORY

Parker filed a request for administrative remedy with the Department wherein he alleged that he was being improperly denied diminution of his sentence or “good time.” *See* La. Admin. Code, Title 22, Part I, § 325. Parker is serving three consecutive sentences, each consisting of seven years at hard labor with two years of each sentence suspended, based upon his conviction in 2006 of three counts of indecent behavior with a juvenile in violation of Louisiana Revised Statute 14:81.¹ Pursuant to Louisiana Revised Statute 15:537A, a person convicted of certain sexual offenses, including indecent behavior with a juvenile, “shall not be eligible for diminution of sentence for good behavior.” The prohibition of good time eligibility for a sex offender was included in Section 15:537A by an amendment in 1999. *See* La. Acts 1999, No. 1209, § 1 (effective August 15, 1999). Prior to that amendment, Section 15:537 granted the sentencing court discretion concerning the defendant’s eligibility for good time by providing, in pertinent part, that the “sentencing court may deny or place conditions on eligibility for diminution of sentence for good behavior” when a person was convicted of the identified sex offenses. That discretion was removed by the 1999 amendment.

In his administrative claim, Parker asserted that he was eligible for good time because when he was sentenced in 2006, Louisiana Revised Statute 15:571.3A(1), which generally governs diminution of sentence for good behavior, provided that every prisoner may earn diminution of his sentence except, in

¹ Parker’s sentence also includes five years of supervised probation after his release from incarceration, subject to numerous conditions set forth in his sentence.

pertinent part, “when the sentencing court has denied or conditioned eligibility for ‘good time’ as provided in R.S. 15:537.” Seizing on this language, which appears to be a reference to the pre-1999 version of Section 15:537, Parker argued that he should be eligible for good time because the sentencing court did not expressly deny or condition his eligibility for good time.²

The Department denied the request for administrative relief based upon a finding that Section 15:537, as amended in 1999, prohibits good time eligibility for any person convicted of indecent behavior with a juvenile. Parker then sought review of that denial in a petition for judicial review filed in the Nineteenth Judicial District Court. Pursuant to Louisiana Revised Statutes 15:1178B and 15:1188A, the petition was reviewed by a commissioner who recommended that the Department’s decision be affirmed and the appeal be dismissed with prejudice at Parker’s cost.³ The commissioner recognized that Section 15:537A was amended in 1999 to remove any judicial discretion concerning a sex offender’s ineligibility for good time; however, the corollary language in Section 15:571.3A(1) was not amended to conform to amended Section 15:537A until 2011, which the commissioner attributed to an apparent oversight by the legislature. Any conflict between Section 15:537A and Section 15:571A(1) during the twelve years between the respective amendments of the statutes was resolved by the application of Section 15:537A because it is the more specific statute and the more recent expression of the legislature. Accordingly, the commissioner concluded that the Department was required by law to deny good time eligibility to

² The quoted language from Section 15:571.3A(1) relied upon by Parker was removed from the statute in 2011 by Louisiana Acts 2011, No. 186.

³ The office of commissioner for the Nineteenth Judicial District Court was created by Louisiana Revised Statute 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 court judge, who may accept, reject, or modify them. La. R.S. 13:713C(5). See *Owens v. Stalder*, 06-1120 (La. App. 1 Cir. 6/8/07), 965 So.2d 886, 888 n.6.

Parker regardless of whether the sentencing court expressly denied that eligibility. After *de novo* consideration of the administrative record, the district court adopted the commissioner's report, affirmed the Department's decision, and dismissed the appeal with prejudice at Parker's costs. Parker appealed that judgment to this court.

LAW AND ANALYSIS

Petitioner's claims are governed by the Corrections Administrative Remedy Procedure (CARP) set forth at Louisiana Revised Statutes 15:1171-1179. Judicial review of an adverse decision by the Department is authorized by Section 1177, which provides that the court may reverse or modify the administrative decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions 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 or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, or (6) manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. La. R.S. 15:1177A(9); *Victorian v. Stalder*, 99-2260 (La. App. 1 Cir. 7/14/00), 770 So. 2d 382, 384-85 (*en banc*).

Parker asserts four assignments of error, three of which concern the district court's determination that Section 15:537A prohibited the Department from granting Parker diminution of his sentence. In the remaining assignment of error, Parker contends that the district court erred in not granting his request for a subpoena ordering the Department to produce records of other sex offenders who were convicted and sentenced after Parker and, according to Parker, are receiving diminution of their sentences.

The trial court did not err in adopting the report of the commissioner finding that the Department properly denied Parker any diminution of his sentence. After its amendment in 1999, Section 15:537A unequivocally prohibits good time eligibility for any person convicted of indecent behavior with a juvenile. When Parker was sentenced in 2006, his eligibility for good time did not need to be expressly denied or conditioned in his sentence because his ineligibility for good time was no longer a matter of discretion with the sentencing court.

Parker's argument that Section 15:571A(1), as it existed in 2006, granted him the right to good time unless "the sentencing court . . . denied or conditioned eligibility for 'good time' as provided in R.S. 15:537" was properly rejected by the district court. The quoted language was a reference to the pre-1999 version of Section 15:537, which granted the sentencing court the discretion to deny or place conditions on eligibility for diminution of sentence for good behavior for a sex offender. That discretion was removed by the 1999 amendment. Although the reference in Section 15:571A(1) to the pre-amendment version of Section 15:537A was not removed until 2011, the more specific language of Section 15:537A controls any conflict between the two statutes. *See Pumphrey v. City of New Orleans*, 05-0979 (La. 4/4/06), 925 So. 2d 1202, 1210 ("[I]f there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character.") Moreover, as further recognized by the commissioner, the 1999 amendment to Section 15:537A that prohibited good time eligibility for sex offenders was the more recent expression of the legislature and for that additional reason is controlling. *See Pumphrey*, 925 So. 2d at 1210 ("Under general rules of statutory construction, the latest expression of the legislative will is considered controlling and prior enactments in conflict are considered as tacitly repealed in the absence of an express repealing clause.") Because the Department properly denied Parker's request for administrative relief,

the district court correctly dismissed the petition for judicial review. *See* La. R.S. 15:1177A(9).

We also find no merit to Parker's assignment of error contending that the district court erred by not issuing a subpoena pursuant to Parker's request, ordering the Department to produce records of other sex offenders who were convicted and sentenced after Parker and, according to Parker, are receiving diminution of their sentences. Parker's request for a subpoena sought the production of additional documents that were not introduced in the administrative proceeding. Under CARP, the opportunity for the parties to present evidence occurs at the administrative level, not at the district court level. *Millsap v. Cain*, 09-0511 (La. App. 1 Cir. 10/23/09), 2009 WL 3452891 (unpublished opinion); *Robinson v. Stalder*, 98-0558 (La. App. 1 Cir. 4/1/99), 734 So. 2d 810, 812. When reviewing an administrative final decision in an adjudication proceeding, the district court functions as an appellate court. *Lightfoot v. Stalder*, 00-1120 (La. App. 1 Cir. 6/22/01), 808 So. 2d 710, 717, *writ denied*, 01-2295 (La. 8/30/02), 823 So. 2d 957. The review by the district court "shall be confined to the record" established at the administrative level, absent alleged irregularities in the procedure. La. R.S. 15:1177(A)(5); *Robinson*, 734 So. 2d at 812. Accordingly, this final assignment of error has no merit.

CONCLUSION

We affirm the trial court's judgment dismissing the petition for judicial review with prejudice and assess all costs of this appeal to Bobby Parker.

AFFIRMED.