

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

WALTER HOUSTON, JR.

NO. 2013 CW 0855

VERSUS

LOUISIANA DEPARTMENT OF
PUBLIC SAFETY AND
CORRECTIONS

SEP 24 2013


In Re: Walter Houston, Jr., applying for supervisory writs,
19th Judicial District Court, Parish of East Baton
Rouge, No. 609184.

BEFORE: PETTIGREW, McDONALD AND McCLENDON, JJ.

WRIT GRANTED IN PART AND DENIED IN PART. Relator challenges the fact of his confinement and claims he is entitled to immediate release because, although his original custody was lawful, the alleged failure to transfer the proper documents to the penal institution resulted in his custody becoming unlawful. **Manuel v. Stalder**, 2004-1920 (La. App. 1st Cir. 12/22/05), 928 So.2d 24, 27; **Fredrick v. Ieyoub**, 99-0616 (La. App. 1st Cir. 5/12/00), 762 So.2d 144 writ denied, 2000-1811 (La. 4/12/01), 789 So.2d 581. See La. Code Crim. P. arts. 351, 362(2), 362(3) & 892. Based on our reading of the allegations in relator's petition, we find that it constitutes a "true" habeas corpus petition, which must be filed in Winn Parish, the parish of custody. See La. Code Crim. P. art. 352. Accordingly, the district court lacked jurisdiction to address relator's claims and the dismissal of relator's petition based on improper venue was proper. See La. C.C.P. art. 932(B). However, because the district court lacked jurisdiction, it improperly reached the merits of the claims and improperly ordered that the dismissal be with prejudice and that the dismissal be considered a "strike" under the Prison Litigation Reform Act, La. R.S. 1187 and 1188. Accordingly, the application is granted to the extent that the portion of the judgment pertaining to the "strike" is vacated. We further amend the judgment to provide that dismissal shall be without prejudice. To the extent the application seeks other relief, it is denied.

PMc
JTP
JMM

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FOR THE COURT