

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 1309

DEMARCO HAWKINS

VERSUS

LOUISIANA DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS



Judgment Rendered: MAY 22 2014

On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. 615,673
Honorable Kay Bates, Judge Presiding

Demarco Hawkins
Allen Correctional Center
Cottonport, Louisiana

Appellant/Pro Se

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Baton Rouge, Louisiana

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

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

Guidry, J. CONCUR.
RHP by [Signature] concurs without reasons -

DRAKE, J.

Appellant, Demarco Hawkins, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department), housed at Allen Correctional Center (Allen Correctional) in Cottonport, Louisiana, appeals a judgment of the district court that dismissed his petition for judicial review with prejudice. Based on our review of the record, we affirm the district court's judgment.

FACTS AND PROCEDURAL HISTORY

On September 25, 2012, Mr. Hawkins filed a petition for judicial review in the Nineteenth Judicial District Court (19th JDC) seeking review of Administrative Remedy Procedure (ARP) No. ALC-2011-215. In ALC-2011-215, he claimed that a private contractor, GEO Group, Inc. (GEO), that managed Allen Correctional, illegally forfeited the good time that he had earned between January 17, 2006, and October 15, 2010. Mr. Hawkins dated ALC-2011-215 as "ongoing." On April 26, 2011, Allen Correctional rejected the ARP filed by Hawkins. Allen Correctional noted that Department Regulation B-05-005 does not permit the ARP to be used for appeals of "disciplinary matters." *See* La. Admin. Code tit. 22, pt. I, § 325(I)(1)(a)(ii)(b)(i). Instead, Allen Correctional determined that the matter should have been "addressed via the appeals process."

After the rejection of his claim, Hawkins filed a petition for judicial review with the district court claiming that GEO denied his ARP and rejected his appeals. The Department answered the prisoner suit and claimed that the grievance of Hawkins was properly rejected. Hawkins filed a pleading entitled "Traverse to State[']s Answer," claiming that GEO, which manages Allen Correctional pursuant to La. R.S. 39:1800.1, violated La. R.S. 39:1800.5(5) by the forfeiture of his good time. Louisiana Revised Statute 39:1800.5(5) does not permit a correctional

facility to delegate to a private contractor of a prison the authority or responsibility for “[g]ranting, denying, or revoking sentence credits.”

The 19th JDC Commissioner¹ (Commissioner) issued a report pursuant to La. R.S. 15:1177(A)(5) and (9), recommending denial of the relief sought by Hawkins and dismissal of his suit. The district court adopted the recommendation of the Commissioner after a *de novo* review of the record. It is from this judgment that Hawkins appeals.

DISCUSSION

Hawkins filed a petition for judicial review of an ARP in accordance with Corrections Administrative Remedy Procedure, La. R.S. 15:1171, *et seq.* with the 19th JDC. The Department answered the petition for judicial review and claimed that a disciplinary matter cannot be filed as an ordinary administrative grievance pursuant to the ARP process. Louisiana Revised Statute 15:1177(A)(9) sets forth the appropriate standard of review by the district court, which functions as an appellate court when reviewing the Department’s administrative decisions. A review is mandated to be conducted by the district court without a jury and must be confined to the record. La. R.S. 15:1177(A)(5). Specifically, the court may reverse or modify the administrative decision only if substantial rights of the appellant have been prejudiced because the administrative 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 an abuse of discretion, or

¹ The office of commissioner of the 19th JDC 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 prisoners. La. R.S. 13:713(A). The commissioner’s written findings and recommendations are submitted to a district court judge, who may accept, reject, or modify them. La. R.S. 13:713(C)(5); *see Martinez v. Tanner*, 11-0692 (La. App. 1 Cir. 11/9/11), 79 So. 3d 1082, 1084 n.3, *writ denied*, 11-2732 (La. 7/27/12), 93 So. 3d 597.

(6) manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. La. R.S. 15:1177(A)(9); *Lightfoot v. Stalder*, 00-1120 (La. App. 1 Cir. 6/22/01), 808 So. 2d 710, 715-16, writ denied, 01-2295 (La. 8/30/02), 823 So. 2d 957.

On review of the district court's judgment under La. R.S. 15:1177, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. *McCoy v. Stalder*, 99-1747 (La. App. 1 Cir. 9/22/00), 770 So. 2d 447, 450-51.

At issue in the instant case is whether the 19th JDC erred in affirming the Department's decision to reject the appeal of Hawkins for restoration of all the good time forfeited during disciplinary hearings at Allen Correctional between January 17, 2006, and October 15, 2010. Hawkins based his claim on the argument that La. R.S. 39:1800.5(5) prohibits private prison contractors from "granting, denying or revoking" good time credits. See *Singleton v. Wilkinson*, 06-0637 (La. App. 1 Cir. 2/14/07), 959 So. 2d 969. The Department rejected the manner in which Hawkins filed his appeal as an ARP rather than a direct disciplinary appeal pursuant to Department Regulation B-05-005.

The Disciplinary Rules for Adult Offenders are contained in LAC Title 22:I:341, et seq. Louisiana Administrative Code 22:I:341(G) requires a disciplinary proceeding to be brought before a disciplinary officer within a certain time frame. An appeal of the disciplinary officer may only be brought to the disciplinary board. LAC 22:I:341(H)(1)(a)(i). "The appeal from the disciplinary officer to the disciplinary board will constitute the final administrative remedy regarding the disciplinary decision." LAC 22:I:341(H)(1)(a)(iv). If an inmate is

dissatisfied with the final decision of the disciplinary board, he is entitled to appeal to the district court. La. R.S. 15:1177.

Hawkins relies upon *Singleton*, 959 So. 2d 969, claiming that the Department could not rely upon the decision to forfeit his good time, since there was no oversight of GEO's decision. In *Singleton*, the inmate followed the proper procedure of appealing the Department's decision to the disciplinary board. Hawkins has not followed the proper procedure. Instead of appealing his forfeiture of good time to the disciplinary board, he filed an ARP. Furthermore, there is no indication in the record that each of the disciplinary decisions between January 17, 2006, and October 15, 2010, was appealed to the disciplinary board. There is not even an indication as to how many disciplinary decisions took place during this time frame. It appears that Hawkins filed an *in globo* claim as an ARP for all the forfeiture of his good time during the time frame mentioned above.

Hawkins claimed in his ARP that the grievance he filed was not a "disciplinary appeal, but, rather, a challenge to Department rules, regulations, policies, and/or procedures." We agree with the Commissioner's observation, which was adopted by the district court, that the matter filed by Hawkins was a disciplinary matter seeking to restore his good time. The restoration of good time is within the exclusive domain of the Department's disciplinary proceedings.

The Department has promulgated administrative "rules," authorized by La. R.S. 15:1171(B), in LAC 22:I:341, referred to as the *Disciplinary Rules and Procedure for Adult Offenders*. The Rules set forth a clear appellate process within a limited time frame to appeal an adverse disciplinary decision that results in the forfeiture of good time. The final administrative decision is made by the Disciplinary Board. LAC 22:I:341(H)(1)(a)(iv). After the Disciplinary Board makes a decision, an inmate may appeal to a district court. La. R.S. 15:1177(A).

Therefore, Hawkins was required to follow the procedures for disciplinary matters set forth in LAC 22:I:341. Furthermore, in order to appeal to the district court, a petitioner must exhaust the disciplinary appellate process, even if the petitioner challenges the “rules, regulations, policies, or statutes.” La. R.S. 15:1171(B).

The failure of an inmate to appeal each disciplinary action against him to the Disciplinary Board and then to the district court does not permit him to file an ARP for the same relief which should have been appealed to the Disciplinary Board. Due process was afforded Hawkins by the disciplinary appellate process that would have allowed the district court the opportunity to review each decision by the Department in every instance in which Hawkins lost good time.

The district court’s decision, affirming the Department’s rejection of the claims of Hawkins, is not arbitrary, manifestly erroneous, or in violation of any of his rights. In addition to the fact that the Disciplinary Board has the exclusive right to review disciplinary decisions, a petitioner may not seek review of more than one administrative decision in a single suit.

Allowing an offender to request review of more than one adverse decision in the same petition would call into question timeliness issues and unnecessarily complicate the reviewing court’s role by having several records transmitted for review. This would allow a multitude of cross referencing issues, facts and actions, which would not allow for orderly disposition of the suit.

Lightfoot v. Stalder, 97-2626 (La. App. 1 Cir. 12/28/98), 727 So. 2d 553, 555. The attempt by Hawkins to have multiple administrative decisions reviewed in a single appeal is not permitted. When Hawkins filed the ARP, he did not give the Disciplinary Board the opportunity to review the ruling of Allen Correctional. Therefore, the ARP was the incorrect procedure to review his forfeiture of good time.

CONCLUSION

For the above reasons, we conclude that the district court did not err in affirming the Department's decision to reject the claims of Demarco Hawkins. All costs of this appeal are assessed to Demarco Hawkins.

AFFIRMED.