

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2013 CA 1928**

**ELLIOT MONTANA**

**VERSUS**

**WARDEN BURL CAIN, CHAD MENZINA AWII**

*WBW*

*JEW*

*MJ*

**Judgment Rendered: MAY 02 2014**

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**Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Docket Number C600044**

**Honorable Janice Clark, Judge Presiding**

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**Elliot Montana  
Angola, LA**

**In Proper Person**

**Terri L. Cannon  
Angola, LA**

**Counsel for Defendant/Appellee  
Louisiana Department of Public Safety &  
Corrections**

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

## **WHIPPLE, C.J.**

Plaintiff, Elliot Montana, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the Department”) confined to the Louisiana State Penitentiary at Angola, appeals a judgment dismissing his petition for judicial review. Montana initiated a lost property claim (# LSP-2010-2207) under the Louisiana Corrections and Administrative Procedure Act, LSA-R.S. 15:1177, et seq., claiming that when he was transferred from the maximum security camp to the extended lockdown camp within Angola, his personal property was not returned to him. Thus, he requested a return of the property.<sup>1</sup> The warden denied the request, noting that Mr. Montana’s signature was on the personal property report form, which indicates that he received all of his property. Likewise, the Department denied the request, also noting that Montana’s signature was on the personal property storage documentation forms. Montana then filed a petition for judicial review. The Department answered, denying Montana’s allegations and submitting the administrative record into evidence. In Montana’s “traverse to state’s answer,” he alleged that the signature on the personal property inventory form was not his signature and that it was signed by someone else.

On August 20, 2012, an order was signed by the district court, staying the matter for forty-five days to allow Montana an opportunity to obtain the statement of the prison employee who allegedly returned his property and witnessed his signature on the property inventory form. Accordingly, Montana interviewed prison employee Lt. Randall Stead, and the record was supplemented with the transcript of the interview.

Thereafter, the Commissioner rendered a report in which he recommended that the district court affirm the Department’s decision to deny Montana’s lost

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<sup>1</sup>The alleged “lost property” consists of various clothing items, one cassette, and letters.

property claim. In accordance with the Commissioner's Report, the district court rendered judgment on July 3, 2013, affirming the decision of the Department and dismissing Montana's petition for judicial review. From this judgment, Montana appeals.

In recommending that the petition be dismissed, the Commissioner stated the following in his report, which we adopt herein as our own and attach hereto as "Exhibit A,":

[T]he petitioner's signature on the portion of the inventory form indicating his property had been returned does appear significantly similar to his signature appearing elsewhere in this record. In this particular matter[,] this Commissioner finds that the Department could rely on the receipt on the inventory form to base the finding the petitioner received his property on June 11, 2010. The petitioner is unable to show the final administrative decision rendered in this matter should be disturbed on judicial review.

After careful review, we likewise find no merit to Montana's lost property claim. The record reveals that Montana was given the opportunity to question Lt. Stead, the prison employee who signed the property inventory form. Lt. Stead stated that while he did not have any personal recollection about Montana signing the form, the typical procedure is to bring the inmate the property and have the inmate sign for the property; if the inmate does not sign, then the seal around the property cannot be broken. Notably, Montana did not offer any evidence to rebut the statements of Lt. Stead regarding the procedures employed or to support the claim that his signature on the form was a forgery.

### **CONCLUSION**

After a thorough review, we find the record supports the judgment of the district court, rendered in accordance with the reasons set forth in the report and recommendation of the Commissioner, which we adopt herein as our own. Thus, the July 3, 2013 judgment of the district court, dismissing Montana's petition for

judicial review with prejudice, is hereby affirmed. All costs of this appeal are assessed to plaintiff/appellant, Elliot Montana.

**AFFIRMED.**

ELLIOT MONTANA  
D.O.C # 293682

VS.

LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY & CORRECTIONS

\* NO. 600-044 SECTION: D  
\* 19<sup>th</sup> JUDICIAL DISTRICT COURT  
\* PARISH OF EAST BATON ROUGE  
\* STATE OF LOUISIANA

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COMMISSIONER'S RECOMMENDATION

The petitioner filed the instant request for relief pursuant to R.S. 15:1177 seeking judicial review of the final agency decisions rendered under Lost Property Claim No. LSP-2010-2207. The petitioner contends he was placed in extended lockdown on May 12, 2010 and his property was not returned to him upon his release from lockdown. The Department filed the administrative record in this matter which contains an inventory form, that the Department contends, contains a receipt for the return of the petitioner's property on June 11, 2010. The petitioner contends that his signature was forged on the inventory form and that he never received his property.

ANALYSIS OF THE FACTS AND LAW

The scope of this Court's review is limited by R.S. 15:1177(A)(5)(8), which states, in pertinent part, as follows:

"(5) The review shall be conducted by the Court without a jury and shall be confined to the record. The review shall be limited to the issues presented in the petition for review and the administrative remedy request filed at the agency level.

(9) The court may reverse or modify the decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the Agency;
- c. Made upon unlawful procedure;
- d. Affected by other error of law;
- e. Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion; or
- f. Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record."

EBR1877448

In this case, the Petitioner has been denied a lost property claim and he is seeking an order to the Department to reimburse him for the property that he claims to have lost.

At the hearing conducted in this matter the petitioner made a request to expand the administrative record by calling the corrections employee who returned his property and witnessed his signature. The Department objected and this Commissioner's predecessor maintained the objection based on the finding that the petitioner should have sought, at the very least, a written statement from the officer who delivered his property. The Commissioner then found the petitioner had waited too late in these proceedings to seek the testimony of the officer whose name appears on the inventory form as the person who delivered the petitioner's property. After the Commissioner made his recommendation The court rejected it and advised this Commissioner to allow the petitioner to question the officer who was reported to have returned the property to him. A transcript of the hearing proceedings, including the ruling by the prior Commissioner, regarding the petitioner's request to expand the administrative record, and the petitioner's questioning of the officer is included for this Court's review.

This Commissioner notes as the prior Commissioner did, that the signature on the inventory form indicating the return of the inventoried property items does somewhat match the signature of the petitioner elsewhere in these pleadings. The petitioner's first name does appear to be very similar to the other signatures, but the last name is illegible. This Commissioner notes that it's often a difficult burden for an inmate to satisfy the burden of proof required to obtain a reversal of a final administrative decision. Inmates' access to evidence and information is often times restricted in a correctional environment. In this matter the petitioner is required to show the finding by the Department that the petitioner signed for receipt of his property is manifestly erroneous, arbitrary or an abuse of discretion. This Commissioner finds that the petitioner's signature on the portion of the inventory form indicating his property had been returned does appear significantly similar to his signature appearing elsewhere in this record. In this particular matter this Commissioner finds that the Department could rely on the receipt on the inventory form to base the finding the petitioner received his property on June 11, 2010. The petitioner is unable to show the final administrative decision rendered in this matter should be disturbed on judicial review.

Accordingly, it is the recommendation of this Commissioner that the final agency decision rendered below should be affirmed and this matter dismissed with prejudice, at the petitioner's cost.

**COMMISSIONER'S RECOMMENDATION**

Therefore, after a careful review of the administrative record, the oral arguments, and the law applicable, for reasons hereinabove stated, finding that the law mandates the Department's decision herein, it is the recommendation of this Commissioner that the Department's decision to deny the petitioner's lost property claim be affirmed and that this appeal be dismissed with prejudice at the Petitioner's costs.

Respectfully recommended, this 16<sup>th</sup> day of May, 2013 at Baton Rouge, Louisiana.



QUINTILLIS K. LAWRENCE,  
COMMISSIONER, SECTION B  
NINETEENTH JUDICIAL DISTRICT COURT

**FILED**  
MAY 17 2013  
*[Signature]*  
DEPUTY CLERK OF COURT

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS/JUDGMENT/ORDER/COMMISSIONER'S RECOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED TO: ALL PARTIES NOTIFIED.  
DONE AND SIGNED ON 5-17-13  
*[Signature]*  
DEPUTY CLERK OF COURT