NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 0633

DAVID LYNN STAPLETON

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, JAMES LEBLANC, SECRETARY

Judgment Rendered: NOV 07 2014

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number C620232

Honorable Wilson Fields, Judge Presiding

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David Lynn Stapleton **Winnfield, LA**	**Plaintiff/Appellant,** **Pro Se**
Jonathan R. Vining **Baton Rouge, LA**	**Counsel for Defendant/Appellee** **James M. Leblanc, Secretary, Louisiana Department of Public Safety & Corrections**

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

WHIPPLE, C.J.

David Lynn Stapleton, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the DPSC), appeals a judgment of the district court dismissing his petition for judicial review. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

David Lynn Stapleton is currently serving a thirty-year prison sentence, as imposed on June 18, 2009, by the Thirty-Fifth Judicial District Court for Grant Parish, for fourth offense driving while intoxicated (DWI). On July 4, 2012, Stapleton filed a formal written request for relief, pursuant to LSA-R.S. 15:1171, *et seq.*, alleging that he is "being held" for a fourth-offense DWI due to the illegal computation of time from a former DWI sentence in 1993.[1] Specifically, Stapleton contended that on June 21, 1993, following a January 17, 1993 arrest for DWI, he was sentenced by the Fourth Judicial Court for Ouachita Parish to five-years imprisonment with all but one year suspended and credit for time served. He was released as having completed his sentence on these charges on November 17, 1993. However, Stapleton contended that he should have been released four months earlier, around July 17, 1993, under Act 138 governing "good time."[2] Stapleton argued that if he had been released at the proper time, i.e., in July 1993,

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[1]Louisiana Revised Statutes 15:1171-1179, the Corrections Administrative Remedy Procedure Act ("CARP"), provides that the DPSC or sheriff may adopt administrative remedy procedures for receiving, hearing, and disposing of any and all complaints and grievances by offenders against the state, the governor, the DPSC or its employees. The adopted procedures are the exclusive remedy for handling complaints and grievances to which they apply. LSA-R.S. 15:1171. The promulgated rules and procedures are set forth in Section 325 of Title 22, Part I of the Louisiana Administrative Code. Pursuant to these rules, offenders must use a two-step administrative review process before they can proceed with a suit in federal or state court. See LSA-R.S. 15:1176; LAC 22:I.325(J); Dickens v. Louisiana Correctional Institute for Women, 11-0176 (La. App. 1st Cir. 9/14/11), 77 So. 3d 70, 74; Edwards v. Bunch, 07-1421 (La. App. 1st Cir. 3/26/08), 985 So. 2d 149, 152-53.

[2]Louisiana Revised Statutes 15:571.3 was enacted by Acts 1991, No. 138, effective January 1, 1992, and provides that prisoners can earn diminution of sentence, known as "good time," at a rate of thirty days of good time for every thirty days served in actual custody. See also Mingo v. Stalder, 98-2798 (La. App. 1st Cir. 9/24/99), 757 So. 2d 709, 710.

this prior conviction could not have been used to enhance his current DWI conviction to a fourth offense. Accordingly, Stapleton sought to have his master prison record amended to reflect his 1993 sentence as he contends it was intended, and he further requested that the DPSC provide documentary proof that his 1993 conviction was satisfied on or before July 17, 1993.

The DPSC denied Stapleton's request, stating in its first-step response that the sentence referenced in Stapleton's grievance "full termed" on September 13, 2001, and that since this had occurred over ten years earlier, it would not be addressed. The DPSC's first-step response further stated that any problems that Stapleton had with his criminal charges should be addressed with the court and not through the administrative remedy procedures.

Stapleton then filed a second-step complaint, alleging that the first-step response did not address the issue of "overcharge" of time spent incarcerated from July 19 to November 17, 1993, "as the [Third Circuit] Court of Appeal has required."[3] The DPSC again denied Stapleton's request for relief, stating:

> The [first-step] response provided is clear and concise, as well as has addressed your request appropriately. Prior jail credit used on Docket No. 93-F0209 cannot be used on your instant offense. As such, this office concurs with staff and finds no further investigation warranted.

After exhausting his administrative remedies, Stapleton filed a petition for

[3]Prior to initiating administrative proceedings, Stapleton apparently filed a petition for post-conviction with the sentencing court, which was denied, prompting Stapleton to seek relief from the Third Circuit Court of Appeal. In denying his application for a supervisory writ of review to the Third Circuit Court of Appeal, the court stated:

> There is no error in the trial court's ruling denying [Stapleton's] application for post conviction relief. However, mandatory venue for actions in which a defendant, who is committed to the Louisiana Department of Corrections, contests the computation of his sentence and discharge date lies in East Baton Rouge Parish. La.R.S. 15:571.15. Thus, after [Stapleton] exhausts his administrative remedies in accordance with La.R.S. 15:1172, he may seek judicial review in the Nineteenth Judicial District. *See* La.R.S. 15:1177 and State v. Demouchet, 95-661 (La. 10/27/95), 661 So.2d 1357. For this reason, the portion of [Stapleton's] writ application contesting his release date for his 1993 conviction is not considered.

judicial review in the Nineteenth Judicial Court for East Baton Rouge Parish.[4] Stapleton alleged that the DPSC failed to address his question in both the first-step and second-step responses. Stapleton further argued that the DPSC erroneously suggested in its response that he was asking for good time on his 1993 conviction to be applied to his current conviction, when in fact he is only seeking an acknowledgment that he was held longer, by four months, than was legally required for his 1993 conviction.

In response to Stapleton's petition, the DPSC answered, acknowledging that Stapleton had exhausted the available administrative remedy procedures and generally denying Stapleton's allegations that his time was calculated incorrectly. The DPSC also provided the trial court with a copy of the administrative record of the proceedings under review, as required by LSA-R.S. 15:1177(A)(3).

The matter was submitted to the commissioner on briefs (although the record does not contain a brief from the DPSC).[5] After review, the commissioner issued a report on November 19, 2013, finding that the court lacked subject matter jurisdiction for which relief may be granted. Specifically, the commissioner found: (1) the petition did not state a basis for relief from the Nineteenth Judicial District Court because it was a claim attacking the validity of his sentence, which must be brought in the sentencing court; and (2) Stapleton no longer had standing as an "offender," pursuant to LSA-R.S. 15:1174, to assert his claim because his sentence full-termed on September 13, 2000. Accordingly, the commissioner recommended

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[4]Louisiana Revised Statutes 15:1177(A) states that "Any offender who is aggrieved by an adverse decision ... may, within thirty days after receipt of the decision, seek judicial review of the decision in the Nineteenth Judicial District Court." Further, section A(1)(a) provides: "Proceedings for review may be instituted by filing a petition for review in the district court within thirty days after receipt of the notice of the final decision by the agency....."

[5]The office of the commissioner of the Nineteenth Judicial District Court was created by LSA-R.S. 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. LSA-R.S. 13:713(C)(5).

that the district court affirm the DPSC's decision and dismiss Stapleton's petition with prejudice, at his costs.

A judgment was signed by the trial court on January 2, 2014, adopting the commissioner's report and dismissing Stapleton's petition with prejudice. Stapleton now appeals, assigning as error the dismissal of his petition for judicial review due to lack of subject matter jurisdiction.

LAW AND ANALYSIS

In recommending that Stapleton's petition should be dismissed for lack of subject matter jurisdiction, the commissioner viewed Stapleton's petition as challenging the validity of his current criminal sentence and present incarceration, and concluded that such claims attacking the validity or legality of a sentence must be filed in the parish of conviction pursuant to statutory law. As the commissioner correctly noted, challenges to an illegal sentence must be brought in the sentencing court, i.e. the parish of conviction (or corrected by an appellate court on review). LSA-C.Cr.P. art. 882(A). However, a careful reading of Stapleton's petition shows that he is not challenging the legality of his **current** sentence as imposed by the sentencing court, but is complaining of a purported time computation error as to an earlier sentence imposed in 1993. In his prayer for relief, Stapleton does not seek release from his present incarceration due to an alleged illegal sentence. Rather, Stapleton purports to seek only to have to have his master prison record amended to reflect the 1993 sentence as he contends it was intended to be computed, and to obtain proof that his 1993 sentence was satisfied on or before July 17, 1993. According to Stapleton's "Objection to State's Answer," he "simply wants somebody to say 'yeah, they kept him four months to[sic] long.' That four months was used to give [him] 30 years, (current sentence), instead of the maximum five he should have gotten[sic]. [He] will then address the issue back in the district court of conviction."

While challenges to an illegal sentence must be brought through post-conviction relief proceedings in the sentencing court, challenges to time computations must be pursued through CARP. Louisiana Revised Statutes 15:1171(B) expressly includes "time computations" among the illustrative lists of complaints and grievances that are subject to CARP. See also Branch v. Louisiana Dept. of Public Safety and Corrections, 2012-0749 (La. App. 1st Cir. 12/21/12), 111 So. 3d 1059, 1060, n.1 ("An inmate alleging an error in time computation must pursue his claim through a Corrections Administrative Remedy Procedure (CARP), with appellate review first at the district court and then with this court.") Here, Stapleton undisputedly sought review through the instant CARP proceedings regarding a time computation grievance, and undisputedly exhausted the available administrative review procedures herein. As such, pursuant to LSA-R.S. 15:1177(A), judicial review of any purported improper "time computation" decision vested in the Nineteenth Judicial District Court, which would have subject matter jurisdiction, provided the demand for review was otherwise proper and timely requested.[6]

Moreover, to the extent that the commissioner and the district court concluded that there was no subject matter jurisdiction herein because Stapleton no longer had status as an "offender" in that he had "full termed" on the 1993 conviction, we note that for purposes of CARP, such "status as an 'offender' is determined as of the time the basis for a complaint or grievance arises" and "[s]ubsequent events, including posttrial judicial action or release from custody,

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[6]Louisiana Revised Statutes 15:1177(A) provides:

> Any offender who is aggrieved by an adverse decision, excluding decisions relative to delictual actions for injury or damages, by the Department of Public Safety and Corrections or a contractor operating a private prison facility rendered pursuant to any administrative remedy procedures under this Part may, within thirty days after receipt of the decision, **seek judicial review** of the decision **only in the Nineteenth Judicial District Court or**, if the offender is in the physical custody of the sheriff, in the district court having jurisdiction in the parish in which the sheriff is located, in the manner hereinafter provided:...[Emphasis added.]

shall not affect status as an 'offender' for purposes of this [p]art." LSA-R.S. 15:1171(D). Moreover, LSA-R.S. 15:1174(2) defines "offender" as "an adult or juvenile offender who is in the physical or legal custody of the Department of Public Safety and Corrections, a contractor operating a private prison facility, or a sheriff when the basis for the complaint or grievance arises" and states that "[a]ny subsequent event, including posttrial judicial action or release from custody, shall not affect status as an 'offender' for the purposes of this Part."

Thus, considering the record herein, to the extent that Stapleton's petition asserted a "time computation" grievance governed by CARP, the Nineteenth Judicial District Court had subject matter jurisdiction to review the merits of a grievance asserted by an "offender" who had exhausted the available administrative remedy procedures. Thus, we disagree with the conclusion that the district court had no subject matter jurisdiction. Nonetheless, after careful review, we agree that the dismissal of Stapleton's petition by the district court was proper, as his petition discloses no cause of action and states no claim upon which relief can be granted.

As noted above, Stapleton was arrested on January 17, 1993, and entered a guilty plea to third offense DWI. On June 21, 1993, Stapleton was sentenced to five-years imprisonment, execution of all but one year suspended and credit for time served, and was placed on probation for four years for this offense. He was released as having completed his sentence on November 17, 1993. On February 4, 2007, Stapleton was again arrested for DWI, charged with fourth-offense DWI, and sentenced to the thirty-year term under which he is presently incarcerated.

Thus, even if accepting as true Stapleton's contention that he should have been released four months earlier in 1993 due to "good time," and pretermitting the issue of when his grievance actually arose, his petition asserts no basis for relief, as

this prior conviction still could have been used to enhance his current DWI conviction to a fourth-offense DWI.

Louisiana Revised Statutes 14:98(F)(2) governs the "cleansing period" for DWI convictions, stating:

> For purposes of this Section, a prior conviction shall not include a conviction for an offense under this Section, a conviction for an offense under R.S. 14:39.1, or a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state which prohibits the operation of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance while intoxicated, while impaired, or while under the influence of alcohol, drugs, or any controlled dangerous substance if committed **more than ten years prior** to the commission of the crime for which the defendant is being tried and such conviction shall not be considered in the assessment of penalties hereunder. However, periods of time during which the offender was awaiting trial, under an order of attachment for failure to appear, or **on probation or parole for an offense described in this Paragraph, or periods of time during which an offender was incarcerated** in a penal institution in this or any other state for any offense, including an offense described in Paragraph (1) of this Subsection, **shall be excluded in computing the ten-year period**.

[Emphasis added.]

Under the clear language of LSA-R.S. 14:98(F)(2), the critical date for determining the applicability of prior DWI convictions is not necessarily the date of **release** from incarceration, as Stapleton contends. Rather, the ten-year "cleansing period" is calculated from the date the prior offense was committed, with time spent incarcerated, or on probation or parole, excluded from the calculation.

Louisiana Revised Statutes 15:571.5 addresses "Supervision upon release after diminution of sentence for good behavior; conditions or release; revocation," and provides:

> A. When a prisoner committed to the Department of Public Safety and Corrections is released because of diminution of sentence pursuant to this Part, he **shall be released as if released on parole**.
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> B. (1) Before any prisoner is released on parole upon diminution of sentence, he shall be issued a certificate of parole that enumerates the conditions of parole. These conditions shall be explained to the

prisoner and the prisoner shall agree in writing to such conditions prior to his release on parole.

(2) The person released because of diminution of sentence pursuant to this Part shall be supervised in the same manner and to the same extent as if he were released on parole. The **supervision shall be for the remainder of the original full term of sentence**. If a person released because of diminution of sentence pursuant to this Part violates a condition imposed by the parole committee, the committee shall proceed in the same manner as it would to revoke parole to determine if the release upon diminution of sentence should be revoked.

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

[Emphasis added.]

Considering LSA-R.S. 14:98(F)(2) and LSA-R.S. 15:571.5, even if Stapleton was entitled to be released four months earlier in 1993, i.e., "around July 17, 1993," this prior 1993 DWI offense still could have been used to enhance his subsequent February 4, 2007 DWI offense to a fourth-offense DWI. Specifically, Stapleton was sentenced to five-years imprisonment and four years of probation for his January 17, 1993 DWI offense. Even without considering the four years of probation included in Stapleton's sentence, the ten-year "cleansing period" for purposes of LSA-R.S. 14:98(F)(2) would have begun to run on January 17, 1998, and would not have ended until January 17, 2008. Stapleton's subsequent arrest occurred on February 4, 2007, within the ten-year "cleansing period," and, thus, was properly considered as a prior conviction for purposes of LSA-R.S. 14:98(F)(2).

In sum, on review of the applicable law, we disagree with the district court's conclusion that it had no subject matter jurisdiction on the commissioner's stated basis that Stapleton was no longer an "offender," having served his full term on the earlier sentence. However, we agree that Stapleton's petition should have been dismissed, with prejudice. Specifically, we find that Stapleton's failure to allege

facts upon which any relief could be granted results in a failure to state a cause of action, which this court can notice on its own motion. See LSA-C.C.P. art. 927(A)(5) and (B). Thus, although the district court had the jurisdiction and authority to review his petition for judicial review, we find it could provide no practical relief for his complaints. Therefore, his petition for judicial review must be dismissed for failure to state a cause of action. See Plaisance v. Louisiana State Penitentiary, 2010-1249 (La. App. 1st Cir. 2/11/11), 57 So. 3d 593, 595.[7]

CONCLUSION

For these reasons, we hereby affirm the January 2, 2014 judgment of the district court and the dismissal, with prejudice, of the petition for judicial review. All costs of this appeal are assessed to plaintiff/appellant, David Lynn Stapleton.

AFFIRMED.

[7]We further note that athough not stated by Stapleton as being his intended purpose in seeking to have his 1993 release date amended, the time delays for Stapleton to bring a possible tort claim or false imprisonment claim based on the alleged "time calculation" error have long expired. For all of these reasons, we find that a remand to allow Stapleton to amend his petition would serve no useful purpose and is not warranted, as there are no facts which he could allege herein which would cure the defect and state a cause of action, given the law and the events that have transpired.