

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 0976

JOHN H. BROWN

VERSUS

LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY AND CORRECTIONS<sup>1</sup>

Judgment Rendered: DEC 23 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  
No. 625,267

Honorable Wilson Fields, Judge Presiding

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John H. Brown  
David Wade Correctional Center  
Homer, Louisiana

Plaintiff/Appellant  
Pro Se

Jonathan R. Vining  
Baton Rouge, Louisiana

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

\* \* \* \* \*

BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

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<sup>1</sup> This court notes that Mr. Brown captioned his suit with the Department and another named defendant. However, La. R.S. 15:1177(A)(1)(b) states that the Department is the only proper defendant in an administrative appeal filed by a prisoner.

**DRAKE, J.**

Appellant, John H. Brown, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department), housed at the David Wade Correctional Center (Wade Correctional) in Homer, 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 30, 2013, Mr. Brown sent a petition for judicial review to the Nineteenth Judicial District Court (19th JDC), which was filed on October 10, 2013, seeking review of Administrative Remedy Procedure (ARP) No. DWCC-2013-0661 in accordance with the Corrections Administrative Remedy Procedure Act, La. R.S. 15:1171, *et seq.* The 19th JDC Commissioner<sup>2</sup> (Commissioner) issued a rule to show cause as to why the appeal of ARP No. DWCC-2013-0661 was not filed within the 30 day peremptory time limit as required by La. R.S. 15:1177. Mr. Brown responded to the rule to show cause claiming that he originally filed a complaint because the Department ceased certain medication he was taking for nerve damage to his foot. The Department originally denied relief on June 11, 2013 pursuant to the first step procedure required by the Department. *See* La. Admin. Code 22:I.325(J)(1)(a). The Department again denied relief following the second step on July 30, 2013. *See* La. Admin. Code 22:I.325(J)(1)(b). Mr. Brown claims he did not file his petition for judicial review

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<sup>2</sup> 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.

until September 18, 2013, because he filed for a rehearing, which the Department did not respond to at all.<sup>3</sup>

The Commissioner issued a recommendation pursuant to La. R.S. 15:1177(A), denying the relief sought by Mr. Brown and dismissing his suit since the 30-day time period is preemptory. The district court adopted the recommendation of the Commissioner after a *de novo* review of the record. It is from this judgment that Mr. Brown appeals.

### **DISCUSSION**

The Commissioner noted that on the face of the petition, the appeal to the 19th JDC was untimely, and that Mr. Brown did not bring forth any evidence to the contrary. Mr. Brown claims that the reason his petition for judicial review was untimely was because he filed a request for a rehearing. The law is clear as to what the next step is after an administrative response is received. "If an offender is not satisfied with the second step response, he may file suit in district court." La. Admin. Code 22:I.325(J)(1)(b)(iv). Louisiana Revised Statutes 15:1177(A) sets a 30-day preemptive period for filing the appeal to the district court. *Carter v. Lynn*, 93-1583 (La. App. 1 Cir. 5/20/94), 637 So. 2d 690, 691.

The Commissioner issued a comprehensive report detailing the administrative history of the request for administrative remedies, its underlying facts, its disposition, the applicable legal issues, and his finding and recommendation that the 19th JDC lacked subject matter jurisdiction since the suit filed by Mr. Brown was filed well outside the 30-day preemptory period from

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<sup>3</sup> Mr. Brown refers to the date of September 18, 2013 in his response to the rule to show cause. This court notes that the Commissioner referred to the filing date of September 30, 2013. Although the petition for judicial review is dated September 18, 2013, it was not received by the 19th JDC until September 30, 2013. Furthermore, the petition was not filed until October 10, 2013. However, the result of this opinion remains the same using either the date referred to by Mr. Brown or the date referred to by the Commissioner.

receipt of the final agency decision.<sup>4</sup> Following its *de novo* review of the record, the district court adopted the Commissioner's report and his reasons for judgment and dismissed Mr. Brown's petition for judicial review with prejudice as untimely.

From our review of the record, we find no error in the judgment of the district court dismissing Mr. Brown's claims with prejudice. Mr. Brown does not dispute that he received the final agency decision shortly after July 30, 2013. He did not file his petition for judicial review of the agency's decision until well beyond the thirty-day period provided in La. R.S. 15:1177(A) within which to seek judicial review. Because Mr. Brown failed to timely file his petition for judicial review in the 19th JDC pursuant to La. R.S. 15:1177, the district court lacked subject matter jurisdiction to consider his claim.

Finding that the Commissioner's report dated January 16, 2014, and the district court's judgment adequately state our reasons for judgment, we affirm the judgment of the district court. We issue this summary opinion in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.2(A)(1), (2), (5), (6), and (8). All costs of this appeal are assessed to plaintiff, John H. Brown.

**AFFIRMED.**

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<sup>4</sup> Although the exact date of receipt of the second step response is not contained in the record, Mr. Brown must have received it by at least August 6, 2013, the date he sent a letter purported to be a petition for rehearing.