

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 1005

MICHAEL JONES

VERSUS

JAMES LEBLANC, SECRETARY DEPT. OF CORRECTIONS; JERRY  
GOODWIN, WARDEN DWCC; ANGIE HUFF, ASST. WARDEN DWCC;  
BRENDA ACKLIN, RECORDS DEPARTMENT, DWCC

Judgment Rendered: DEC 23 2014

Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Docket Number C626583

Honorable Timothy E. Kelley, Judge Presiding

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Michael Jones  
Homer, LA

Plaintiff/Appellant  
In Proper Person

William L. Kline  
Baton Rouge, LA

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

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

WBL  
TMH  
JMC

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

Plaintiff, Michael Jones, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the Department”), appeals the district court’s dismissal of his petition for judicial review. For the following reasons, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On April 22, 2013, Jones initiated a complaint under the Louisiana Corrections Administrative Remedy Procedure Act (“CARP”), LSA-R.S 15:1177, *et seq.*<sup>1</sup> The warden denied Jones’s request, stating that Jones was not eligible for a diminution of sentence because he committed a second crime of violence after August 27, 1994, and thus, he was excluded from the requested relief pursuant to “Act 150.” Jones then filed a “second-step complaint,” alleging that Act 150 was being applied in error. On or about July 15, 2013, the Department again denied Jones’s request for review, stating that a second offender convicted of a crime of violence is not eligible to earn diminution of sentence. Jones then filed a petition for judicial review in the Nineteenth Judicial District Court for the Parish of East Baton Rouge.

Thereafter, the Commissioner issued a rule to show cause, requesting that Jones show cause why his suit should not be dismissed based on his failure to timely seek judicial review within thirty (30) days of the final Department decision, as the file-stamp date on the petition in the record indicates that it was filed on December 3, 2013. Jones filed a response, stating that he originally sought judicial review on August 16, 2013, after receiving the final Department decision on July 19, 2013. As proof of the same, Jones attached a notice from the

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<sup>1</sup>A copy of Jones’s initial complaint is not included in the record, but as set forth in his brief filed with the trial court, Jones contends that despite the Department’s responses, he is eligible for “good-time” credit and seeks to have his “RAP Sheet” corrected to reflect a calculation “based on Act 138.” (Acts 1991, No. 138, enacted LSA-R.S. 15:571.3, which provides that inmates 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.)

correctional center, which states that he received mail from the clerk of court from Baton Rouge, La. on September 19, 2013.<sup>2</sup>

On February 20, 2014, the Commissioner rendered a report and recommended that Jones's petition for judicial review be dismissed because it was not timely filed. In accordance with the Commissioner's report, the district court rendered judgment on April 21, 2014, dismissing Jones's petition with prejudice. From this judgment, Jones now appeals.

### DISCUSSION

Louisiana Revised Statute 15:1177(A) provides that an inmate aggrieved by an adverse decision of the Department may "within thirty days after receipt of the decision, seek judicial review of the decision only in the Nineteenth Judicial District Court." In order for the jurisdiction of the reviewing court to attach, the petition for judicial review must be timely filed. Tatum v. Lynn, 93-1559 (La. App. 1st Cir. 5/20/94), 637 So. 2d 796, 797; See also Carter v. Lynn, 93-1583 (La. App. 1st Cir. 5/20/94), 637 So. 2d 690, 691 ("Once the plaintiff failed to seek judicial review within thirty (30) days as provided in La. R.S. 15:1177, his right to relief ceased to exist.") Moreover, this thirty-day period is preemptive, rather than prescriptive, and may not be interrupted or suspended. Evans v. Louisiana Dept. of Public Safety and Corrections, 2013-1345 (La. App. 1st Cir. 4/25/14), 147 So. 3d 195, 197.

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

[T]he record shows that the final denial of relief by the administration was issued July 15, 2013, and the instant appeal was not filed until December 3, 2013, more that[sic] 30 days thereafter. Thus, if the Court finds that considering the Petitioner's failure to seek expansion of the record to include proof of timely filing, this appeal is

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<sup>2</sup>Jones did not attach a copy of the actual letter that he received from the clerk of court on September 19, 2013, and there is no such letter in the record before us.

untimely[,] this Court must dismiss it because the Court has no authority or jurisdiction to consider it.

\* \* \* \*

[U]nless the Petitioner can show timeliness by receipt that he received the final decision after July 15, 2013 either through his records or the Department's, the appeal is untimely on the face of the record and must be dismissed. The Petitioner has not done so to date, but if such proof exists, he can provide it to the Court by traversal or request time to have the Department provide such proof in the record. Otherwise, this Court has no alternative but to dismiss this appeal as untimely.

After careful review of the record herein, we likewise find that Jones's petition must be dismissed as untimely. While Jones states that he received notice of the final Department decision on July 19, 2013, and the Commissioner states that Jones received notice on July 15, 2013, this four-day discrepancy is immaterial, as in either event, the filing of the petition on December 3, 2013 was untimely. We recognize that a petition for judicial review filed by an incarcerated inmate who is unable to personally file his petition in court is considered timely filed if placed in the hands of prison officials within the thirty-day period mandated by LSA-R.S. 15:1177(A). Tatum, 637 So. 2d at 799. However, even giving Jones the benefit of the doubt, the earliest date he could have given prison officials his completed petition for mailing was September 23, 2013, the date on which he signed the petition. This date is also more than thirty days after July 15, 2013 or July 19, 2013, regardless which date is considered as the date of receipt of the final Department decision.

### CONCLUSION

After a thorough review, we find that the record amply supports the judgment of the district court, rendered in accordance with the recommendation of the Commissioner, which we adopt herein as our own. Accordingly, the April 21, 2014 judgment of the district court, dismissing Jones's petition for judicial review

with prejudice, is hereby affirmed. All costs of this appeal are assessed to plaintiff/appellant, Michael Jones.

**AFFIRMED.**

MICHAEL JONES  
DOC# 197711

NO. 626,583 SECTION 22

VERSUS

19<sup>TH</sup> JUDICIAL DISTRICT COURT  
PARISH OF EAST BAYON ROUGE

LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY AND CORRECTIONS

STATE OF LOUISIANA

POSTED

APR 22 2014

COMMISSIONER'S REPORT

The Petitioner, an inmate in the custody of the Department of Public Safety and Corrections, originally filed this suit for judicial review of administrative record #DWCC-2013-0515, seeking review in accordance with R.S. 15:1171 et seq. The Court ordered the petitioner to show cause as to why this suit should not be dismissed as untimely, pursuant to R.S. 15:1177. The Petitioner's petition contained Exh. 1 in-globo, showing that the final agency decision was rendered on July 15, 2013, and presumably signed for by the petitioner on or about the same date. The request for judicial review was not filed herein until December 3, 2013, more than 30 days after receipt of the final agency decision. The petitioner avers in his response to the rule to show cause that he filed the petition in August after receipt of the final step, but has no proof provided of this filing. He goes on to indicate that he "re-filed" the petition in September of 2013, and provides as proof a letter written by him to the clerk, inquiring as to the filing of the petition, and a mail correspondence form from David Wade showing that he received something from the Clerk, it is not proof of his filing the petition timely.

Therefore, this Report is issued for the Court's de novo consideration and adjudication on the validity of the rejection by the administration and/or the procedural bar of time limitations.

ANALYSIS OF THE FACTS AND LAW

This Court's review is limited by statute and preemptive time period therein, R.S. 15:1177(A), which states as follows in pertinent part:

- f. A. Any offender who is aggrieved by an adverse decision by the Department of Public Safety and Corrections ...pursuant to any administrative remedy procedures under this Part may, **within 30 days after receipt of the decision**, seek judicial review of the decision only in the 19<sup>th</sup> Judicial District Court.

EBR2259535

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UNTIMELINESS OF THE APPEAL TO THIS COURT—PURSUANT TO R.S. 15:1177A

I note that on the face of the petition, the appeal to this Court is untimely and the Petitioner has shown no proof to the contrary. He has not provided the Court with proof that he did not receive the rejection until after July 15, 2013, and has not responded at all to the time limitation issues.

Consequently, based on applicable statute and jurisprudence, dismissal would be appropriate for lack of subject matter jurisdiction, if the appeal is considered untimely to this Court.<sup>1</sup>

As stated, the record shows that the final denial of relief by the administration was issued July 15, 2013, and the instant appeal was not filed until December 3, 2013, more than 30 days thereafter. Thus, if the Court finds that considering the Petitioner's failure to seek expansion of the record to include proof of timely filing, this appeal is untimely; this Court must dismiss it because the Court has no authority or jurisdiction to consider it.<sup>2</sup> R.S. 15:1177A above sets the 30-day peremptory time limit for all administrative appeals. And since the 30-day time period is peremptory, by law it is not subject to interruption or suspension for any reason or excuse, including the one offered here.<sup>3</sup> Although, the First Circuit affirmed a dismissal under like circumstances, on the basis of an exception of no cause of action in the *Carter* case, *infra*, failure to timely file a suit for judicial review has also been held to deprive this Court of jurisdiction to hear the complaint.<sup>4</sup> In either case, unless the Petitioner can show timeliness by receipt that he received the final decision after July 15, 2013 either through his records or the Department's, the appeal is untimely on the face of the record and must be dismissed. The Petitioner has not done so to date, but if such proof exists, he can provide it to the Court by traversal or request time to have the Department provide such proof in the record. Otherwise, this Court has no alternative but to dismiss this appeal as untimely.

Nevertheless, in the absence of further proof of timeliness or not, my primary recommendation is to dismiss the appeal on that basis.

<sup>1</sup> See R.S. 15:1177A, setting a 30 day peremptive period for filing this appeal, and See *Blackwell v. DPS&C* 690 So2d 137 (1<sup>st</sup> Cir. 1997) (reversed on other grounds); See also *Carter v. Lynn*, 637 So2d 690 (1<sup>st</sup> Cir. 1994).

<sup>2</sup> See *Blackwell v. DPS&C* 690 So2d 137 (1<sup>st</sup> Cir. 1997) (reversed on other grounds); See also *Carter v. Lynn*, 637 So2d 690 (1<sup>st</sup> Cir. 1994).

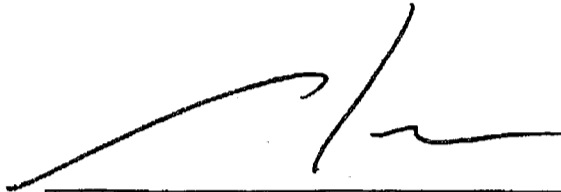
<sup>3</sup> See *Carter v. Lynn*, 637 So2d 690 (1<sup>st</sup> Cir. 1994).

<sup>4</sup> See *Blackwell v. DPS&C* 690 So2d 137 (1<sup>st</sup> Cir. 1997).

**COMMISSIONER'S RECOMMENDATION**

Therefore, after a careful consideration of the administrative record, and the law applicable, for reasons stated, I find, based on the face of the record, the petition is untimely and that the Petitioner has failed to show that he timely sought judicial review of the Department's decision within the 30-day peremptive period. Therefore, I recommend granting the departments exception, and for dismissal for lack of subject matter jurisdiction.

Respectfully recommended this 20<sup>th</sup> day of February 2014, at Baton Rouge, Louisiana.



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

**FILED**

FEB 21 2014

*Trin Carey*  
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 21 Feb 2014  
Trin Carey  
DEPUTY CLERK OF COURT

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