

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 1006

JAMES B. TRUMAN

VERSUS

PAMELA HORNE, SUPV. CCA, LT. COL. EWING - BD.
CHAIRMAN, NATHAN B. CAIN, WARDEN - AVC, DEPARTMENT
OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: DEC 23 2014

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number C627763

Honorable William A. Morvant, Judge Presiding

James B. Truman
Avoyelles Correctional Institute
Cottonport, LA

Plaintiff/Appellant, pro se

William L. Kline
Baton Rouge, LA

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

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

WHIPPLE, C.J.

This is an appeal by James B. Truman, an inmate in the custody of the Department of Public Safety and Corrections (the DPSC), from a judgment of the district court dismissing his petition for judicial review without prejudice. For the following reasons, we amend the district court's judgment to dismiss Truman's claim with prejudice and affirm the judgment as amended.

FACTS AND PROCEDURAL HISTORY

On October 22, 2013, Truman was issued a disciplinary report for violating Rule 30M (general prohibited behaviors) for being in possession of legal work and tax work belonging to other inmates and allegedly performing legal services for other inmates for a fee. After a hearing before the Disciplinary Board, Truman was found guilty of violating the rule and sentenced to four days room confinement and four weeks loss of gym privileges. Truman appealed the decision of the Disciplinary Board to the warden, but, finding no merit to Truman's appeal, the warden concurred in the Disciplinary Board's verdict and sentence imposed and denied the appeal.

Truman then filed a petition for judicial review in the district court, seeking expungement of the disciplinary proceeding from his prison record. Pursuant to the screening requirements set forth in LSA-R.S. 15:1178, the matter was submitted to a commissioner for judicial screening prior to service on the named defendants.¹ On February 13, 2014, the commissioner issued an "Order for Compliance with the Local Rules of the

¹Louisiana Revised Statute 15:1178 mandates a "judicial screening" procedure by the district court to determine if the petition states a cognizable claim or if the petition, on its face, is frivolous or malicious, or fails to state a cause of action. This screening is performed prior to service of the petition on defendants.

Nineteenth Judicial District Court,” ordering Truman to show compliance, within fifteen days, by filing written proof of exhaustion of the administrative remedy procedures afforded by the Corrections Administrative Remedy Procedure Act, LSA-R.S. 15:1171 et seq.

Following a response by Truman, in which Truman noted that he had attached a copy of the warden’s decision to his petition for judicial review, the commissioner issued a Screening Report, concluding that Truman had failed to provide a final agency decision, i.e., a decision issued by the Secretary of the DPSC. Asserting that a final response from the agency head is required before the district court has subject matter jurisdiction to hear a petition for judicial review, the commissioner determined that the court was required to dismiss Truman’s petition without prejudice for failure to exhaust administrative remedies.

In accordance with the Commissioner’s recommendation, the district court signed a screening judgment on April 28, 2014, dismissing Truman’s petition without prejudice and without service on the DPSC, in accordance with LSA-R.S. 15:1172(C), for lack of subject matter jurisdiction based on Truman’s failure to exhaust administrative remedies.² From this judgment, Truman appeals, contending that the district court erred in dismissing his petition for judicial review for non-exhaustion of administrative remedies.

DISCUSSION

An inmate aggrieved by a disciplinary action by the DPSC may seek judicial review pursuant to LSA-R.S. 15:1177 of the Corrections Administrative Remedy Procedure. Victorian v. Stalder, 99-2260 (La. App. 1st Cir. 7/14/00), 770 So. 2d 382, 384 (en banc). However, pursuant to LSA-

²Louisiana Revised Statute 15:1172(C) provides, in pertinent part, that “[i]f at the time the petition is filed the administrative remedy process is ongoing but has not yet been completed, the suit shall be dismissed without prejudice.”

R.S. 15:1176, no state court shall entertain an inmate's petition for judicial review which falls under the purview of the Corrections Administrative Remedy Procedure until the inmate has exhausted available administrative remedies. Where an inmate fails to exhaust available administrative remedies, the district court and the appellate court lack subject matter jurisdiction to review the claim. See Hull v. Stalder, 2000-2730 (La. App. 1st Cir. 2/15/02), 808 So. 2d 829, 831, 833.

The DPSC promulgated the "Disciplinary Rules and Procedures for Adult Offenders," which are published in Title 22 of the Louisiana Administrative Code, to govern all inmate disciplinary matters for prisoners in the custody of the DPSC. LAC 22:I.341(F). Section 341(H)(1)(b) allows an inmate to appeal a disciplinary decision of the Disciplinary Board to the warden. Thereafter, an inmate who is dissatisfied with the warden's appeal decision may further appeal to the Secretary of the DPSC in accordance with Section 341(H)(1)(c), by indicating "that he is 'not satisfied' in the appropriate box on the appeal decision form." LAC 22:I.341(H)(1)(c)(i).

However, there are certain limitations to an inmate's right to have the Secretary of the DPSC consider his appeal, as set forth in Section 341(H)(1)(c)(vii) as follows:

The secretary shall only consider appeals of sanctions from decisions of the warden that resulted in an imposed or suspended sentence of one or more of the following penalties:

- (a). forfeiture of good time;
- (b). a custody change from minimum to medium if it involves transfer to another institution;
- (c). a custody change to maximum;
- (d). failure to earn incentive wages.

Accordingly, where discipline other than those penalties enumerated above has been imposed on an inmate, the inmate has no right to have the Secretary of the DPSC consider an appeal of the warden's decision in the inmate's disciplinary action. See generally Harris v. Cain, 2010-1474 (La. App. 1st Cir. 2/11/11), 2011 WL 846078 (unpublished), and Foster v. La. Dept. of Public Safety and Corrections, 2006-0159 (La. App. 1st Cir. 12/28/06), 2006 WL 3813717 (unpublished), both of which involved an inmate sentenced in a disciplinary action to discipline other than that enumerated in Section 341(H)(1)(c)(vii) of the Disciplinary Rules and Procedures for Adult Offenders, and the inmate sought relief at the administrative level only to the level of an appeal to the warden.

In the instant case, because Truman was sentenced to four days room confinement and four weeks loss of gym privileges, neither of which penalty is listed in LAC 22:I.341(H)(1)(c)(vii), Truman did not have the right to have the warden's appeal decision reviewed or considered by the Secretary of the DPSC.

Nonetheless, even if Truman did exhaust his remedies at the administrative level, we note that the commissioner, in her screening report, further found that Truman "did not lose good time nor did he suffer any other atypical punishment for the disciplinary violations herein, and therefore, no substantial rights are involved in this appeal."

In considering an inmate's petition for judicial review, the district court's standard of review is set forth in LSA-R.S. 15:1177(A), as follows:

(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 abuse of discretion or clearly unwarranted exercise of discretion.
- (f) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

(Emphasis added).

Moreover, the procedural protections of the Due Process Clause are not triggered by every change in the conditions of confinement that have a substantial adverse impact on the inmate. Giles v. Cain, 99-1201 (La. App. 1st Cir. 6/23/00), 762 So. 2d 734, 738. Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system. Giles, 762 So. 2d at 738 (citing Sandin v. Conner, 515 U.S. 472, 485, 115 S. Ct. 2293, 2301, 132 L. Ed. 2d 418 (1995)). Discipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law. Sandin, 515 U.S. at 485, 115 S. Ct. at 2301; Giles, 762 So. 2d at 738. In order to invoke the protection of the Due Process Clause, a prisoner must show an imposition of an atypical and significant hardship in relation to the ordinary incidents of prison life. Sandin, 515 U.S. at 486, 115 S. Ct. at 2301.

In the instant case, as stated above, Truman was found guilty of violating Rule 30M and was sentenced to four days room confinement and four weeks loss of gym privileges. Truman has failed to show that this

discipline is an atypical or significant hardship in relation to the ordinary incidents of prison life and, consequently, has failed to establish prejudice to his substantial rights. See Lay v. Porey, 97-2903 (La. App. 1st Cir. 12/28/98), 727 So. 2d 592, 594, writ denied, 99-2720 (La. 3/31/00), 758 So. 2d 812 (sentence of 30 days of cell confinement did not rise to the level of a substantial right). Accordingly, from our review of the record, we find that Truman has failed to allege facts upon which relief can be granted and, thus, has failed to state a cause of action for judicial review of this disciplinary proceeding.³ Therefore, Truman's petition for judicial review must be dismissed with prejudice 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.

CONCLUSION

For the above and foregoing reasons, the April 28, 2014 judgment of the district court, dismissing without prejudice Truman's petition for judicial review of disciplinary action imposed by the DPSC in Decision Number AVC-2013-277 on the basis that he failed to exhaust administrative remedies, is amended to provide that his petition for judicial review is dismissed with prejudice for failure to state a cause of action. As amended, the judgment is affirmed. Costs of this appeal are assessed against James B. Truman.

AMENDED AND, AS AMENDED, AFFIRMED.

³The failure to allege facts upon which relief can 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); Plaisance v. Louisiana State Penitentiary, 2010-1249 (La. App. 1st Cir. 2/11/11), 57 So. 3d 593, 595.