

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2014 CA 1110**

**COURTNEY MOSES**

**VERSUS**

**JAMES LeBLANC, ET AL**

**Judgment Rendered: DEC 23 2014**

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On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
No. C621981

Honorable Todd W. Hernandez, Judge Presiding

\* \* \* \* \*

Courtney Moses  
Rayburn Correctional Center  
Angie, Louisiana

Plaintiff/Appellant  
In Proper Person

Debra A. Rutledge  
Baton Rouge, Louisiana

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

\* \* \* \* \*

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

*JMC*  
*TMH*  
*edg*

**McCLENDON, J.**

This is an appeal by Courtney Moses, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the DPSC), from a judgment of the Nineteenth Judicial District Court, dismissing his petition for judicial review of request for administrative remedy number RCC-2013-182 filed with the DPSC pursuant to the Corrections Administrative Remedy Procedure (CARP), LSA-R.S. 15:1177, *et seq.*

**FACTS AND PROCEDURE**

In 1997, Mr. Moses was convicted of attempted armed robbery and aggravated battery. On September 17, 1997, the trial court sentenced Mr. Moses to 36 years at hard labor, without benefit of parole, probation, or suspension of sentence, for the attempted armed robbery conviction, and eight years, to run concurrent with the 36 year sentence, on the aggravated battery conviction. The trial court indicated that Mr. Moses was not entitled to "diminution or reduction of sentence for good behavior" under LSA-R.S. 15:571.3 due to the nature of the offenses.

Mr. Moses notes that the initial Master Prison Record (MPR), indicated that he was entitled to parole eligibility on 5/6/2008 and for good time release eligibility on 5/10/2014. The MPR was later updated to reflect that Mr. Moses was not entitled to parole eligibility until 2/2/2022 and that he was not eligible for good time. Mr. Moses avers that the amended MPR now requires that he serve an additional 18 years in prison.

In 2008, Mr. Moses initiated a "Request for Administrative Remedy Procedure" that was logged as ARP RCC-2008-79. Specifically, Mr. Moses claimed that the DPSC had erroneously denied his diminution of sentence. He asserted that although he had been convicted of two violent offenses, he had been subject to a single conviction such that there were not two crimes of violence. Mr. Moses's request was denied at the first step, wherein the correction records manager indicated that although there was only one crime of violence, under the relevant version of LSA-C.Cr.P. art. 890.1 in effect at the

pertinent time, "the sentencing court may deny or place conditions on eligibility for diminution of sentence for good time."<sup>1</sup> The custodian noted that the sentencing court "denied reduction of sentence...and ordered that you not be eligible for good time."

Mr. Moses, dissatisfied with the response, proceeded to the second step. Specifically, he urged that the records' custodian failed to cite Article 890.1 in its entirety and that he should be awarded good time. Mr. Moses's request was denied at the second step. Mr. Moses did not seek judicial review of the denial of his administrative remedy request.

Thereafter, Mr. Moses filed another "Request for Administrative Remedy Procedure," which was designated as ARP RCC-2013-182. Mr. Moses contended that the sentencing court lacked authority to deny diminution of his sentence under LSA-R.S. 15:571.3, and the DPSC lacked authority to place him under the provisions of LSA-C.Cr.P. art. 890.1, absent a court order to do so. The DPSC denied Mr. Moses's request, concluding it was duplicative of ARP RCC-2008-79.

Mr. Moses filed a "Petition for Judicial Review" in the 19th Judicial District Court. After the DPSC filed its answer and submitted the entire records from both ARP RCC-2008-79 and RCC-2013-182, the commissioner of the 19th JDC issued a recommendation that the DPSC's decision be affirmed and the request for judicial review be dismissed with prejudice, at Mr. Moses's cost.<sup>2</sup> In making the recommendation, the commissioner concluded that the ARP was duplicative of the prior request for relief. Subsequently, a judgment was signed by the 19th

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<sup>1</sup> Specifically, LSA-C.Cr.P. article 890.1, as amended by 1995 La. Act No. 946, provided, in pertinent part:

Notwithstanding any provision of law to the contrary, if a person is convicted of or pleads guilty to a crime of violence as defined in R.S. 14:2(13) and is sentenced to imprisonment for a stated number of years or months, the sentencing court may deny or place conditions on eligibility for diminution of sentence for good behavior unless diminution of sentence is prohibited by R.S. 15:571.3 (C) or (D).

<sup>2</sup> The offices of the commissioner of the 19th JDC were created by LSA-R.S. 13:711. The commissioners hear and recommend the disposition of criminal and civil proceedings arising out of the incarceration of inmates. LSA-R.S. 13:713. A 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.

JDC adopting the recommendations of the commissioner, affirming the DPSC's decision, and dismissing Mr. Moses's petition with prejudice. Mr. Moses appeals.

### **DISCUSSION**

Mr. Moses contends that in view of the record as a whole, it is clear that the sentencing court failed to adhere to the statutory provisions necessary to deny diminution of a sentence following conviction of a crime of violence. Mr. Moses asserts that the sentencing court cannot deny eligibility for good time credits against a sentence because the statute governing such credit is directed exclusively to the DPSC. Specifically, Mr. Moses contends that the sentencing court sentenced him under LSA-R.S. 15:571.3 and made no reference to LSA-C.Cr.P. art. 890.1. As such, Mr. Moses submits that under these circumstances the DPSC cannot apply LSA-C.Cr.P. art. 890.1. Moreover, Mr. Moses contends that the district court's interpretation of his claims resulted in an adverse decision that is arbitrary or capricious or characterized by an abuse of discretion.

As noted by the commissioner, the initial grievance submitted by Mr. Moses in ARP RCC-2008-079, although not clearly stated, shows that Mr. Moses complained about the sentencing court's authority under LSA-C.Cr.P. art. 890.1 to deny his eligibility for diminution of his sentence. The current ARP again raises the same issue with regard to authority under LSA-C.Cr.P. art. 890.1 relative to the diminution of his sentence. Mr. Moses had the opportunity to pursue this issue in ARP RCC-2008-079 in a petition for judicial review. He failed to do so. As such, ARP RCC-2013-182 was properly rejected as a duplicative request. La. Admin. Code, Tit. 22, Part 1, § 325(I)(1)(c).

Even so, the sole issue Mr. Moses raised in the current ARP request was that his sentence was illegal, because the sentencing judge did not specifically invoke LSA-C.Cr.P. art. 890.1. This was not a claim appropriate to disposition through CARP, because the DPSC had no power to alter Mr. Moses's sentence. **Madison v. Ward**, 00-2842 (La.App. 1 Cir. 7/3/02), 825 So.2d 1245, 1255. Instead, this claim should have been raised either through timely motion for reconsideration of sentence directed to the sentencing court (LSA-C.Cr.P. art.

881.1), timely direct appeal of that sentence to the appropriate court of appeal, or at any time by a motion to correct illegal sentence (LSA-C.Cr.P. art. 882(A)) directed to the sentencing court. **Madison**, 825 So.2d at 1255. The record does not indicate whether Mr. Moses attempted to challenge his sentence through any of the appropriate, available, procedural vehicles. We further observe that, because Mr. Madison was sentenced in St. Charles Parish, neither the 19th JDC nor this court would have had jurisdiction over such a challenge. See Madison, 825 So. at 1255.

### **CONCLUSION**

For the foregoing reasons, the district court's judgment is affirmed. Costs of this appeal are assessed to appellant, Courtney Moses.

**AFFIRMED.**