

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 0792

TERRY BROOKS

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS¹

Judgment Rendered: JAN 29 2015

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number C611001

Honorable Todd Hernandez, Presiding

Terry Brooks
St. Gabriel, LA

Plaintiff/Appellant
Pro Se

William L. Kline
Baton Rouge, LA

Defendant/Appellee
Department of Public Safety and
Corrections

BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

¹ As noted in the Commissioner's Screening Recommendation, the Department of Public Safety and Corrections is the proper party defendant in this matter.

Guidry
Theriot
EGD
Drake

GUIDRY, J.

Petitioner, Terry Brooks, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department) housed at Elayn Hunt Correctional Center, appeals from a judgment of the district court dismissing his petition for judicial review. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

In 1988, Mr. Brooks was convicted of armed robbery and sentenced as a habitual offender in accordance with La. R.S. 15:529.1. Following his conviction, Mr. Brooks was transferred several times between Avoyelles Correctional Center (Avoyelles) and Elayn Hunt Correctional Center (Hunt). On November 22, 2004, upon transfer to Avoyelles, Mr. Brooks executed a good time rate option and approval form, wherein he indicated that he wanted to receive good time at the rate of thirty days for every thirty days in actual custody, pursuant to La. R.S. 15:571.3. The good time option was approved by the warden for Avoyelles, and he was found to be eligible to receive good time effective August 4, 1988.

However, on September 7, 2010, following Mr. Brooks's transfer back to Hunt, his master prison record was corrected to reflect that he was not eligible to receive good time on his habitual offender sentence for armed robbery. Mr. Brooks subsequently filed an Administrative Remedy Procedure (ARP), contesting the Department's finding that he was ineligible to receive good time. Mr. Brooks asserted that in accordance with La. R.S. 15:571.3(C) and Department regulations, the armed robbery offense, as the instant offense, should not be considered and therefore, because his prior conviction for first degree robbery is not an enumerated offense in La. R.S. 15:571.3(C), he is eligible to receive good time.

Mr. Brooks's ARP was reviewed, and the relief requested was denied. Thereafter, Mr. Brooks filed a petition for judicial review in the district court. Following a hearing, the Commissioner recommended that the Department's

decision to deny Mr. Brooks good time be affirmed and that his suit be dismissed, because under the clear wording of La. R.S. 15:571.3(C) as it existed when he filed his ARP, Mr. Brooks was not entitled to earn good time. Mr. Brooks subsequently filed a traversal to the Commissioner's recommendation. After a careful *de novo* consideration of the administrative record and the traversal, the district court signed a judgment adopting the Commissioner's reasons, affirming the Department's decision to deny Mr. Brooks good time eligibility, and dismissing Mr. Brooks's appeal with prejudice.

Mr. Brooks now appeals from the district court's judgment.

DISCUSSION

At the time that Mr. Brooks committed the offense of armed robbery, La. R.S. 15:571.3(C) provided, in pertinent part:²

Diminution of sentence shall not be allowed an inmate in the custody of the Department of Corrections if:

(1) The inmate has been convicted one or more times under the laws of this state of any one or more of the following crimes:

* * *

(k) Armed robbery.

* * *

(2) The inmate has been sentenced as an habitual offender under the Habitual Offender Law as set forth in R.S. 15:529.1, and

(3) The inmate's last conviction for the purpose of the Habitual Offender Law, was for a crime ... committed on or after September 10, 1977.

This circuit has consistently held that under the clear wording of this statute, a petitioner is not entitled to earn diminution of his sentence through good time credit if: (1) the present conviction is for one of the enumerated crimes specifically listed under paragraph (C), subpart (1) of the statute as an offense for which no good time credit may be earned; (2) he was sentenced as a habitual offender under

² See Massey v. Louisiana Department of Public Safety and Corrections, 13-2789, p. 4 (La. 10/15/14), 149 So. 3d 780, 783 (wherein the Louisiana Supreme Court noted that it is the law in effect at the time of the commission of the offense that is determinative of the penalty which the convicted accuser must suffer); see also Brown v. Louisiana Department of Public Safety and Corrections, 14-1059, p. 4 (La. App. 1st Cir. 1/8/15), ___ So. 3d ___.

La. R.S. 15:529.1; and (3) the last conviction was for a crime committed on or after September 10, 1977. See Nicholas v. Phelps, 521 So. 2d 636, 637 (La. App. 1st Cir. 1988).

Accordingly, because Mr. Brooks's present conviction is for armed robbery, one of the enumerated crimes in La. R.S. 15:571.3(C)(1), he was sentenced as a habitual offender under La. R.S. 15:529.1, and his last conviction was for a crime committed in May 1988, well after September 10, 1977 date, he is clearly not entitled to earn good time under La. R.S. 15:571.3(C).

Also, we find no merit in Mr. Brooks's argument that because the Department erroneously allowed him to earn good time credit it must allow him to retain the credit he has earned. The mandatory language of La. R.S. 15:571.3(C) provides that "diminution of sentence *shall not* be allowed" (emphasis added). Accordingly, the Department had no authority to permit Mr. Brooks to earn good time.³ Further, because Mr. Brooks has no right to good time credits illegally granted to him by the Department, the Department had a right to correct the error it made in the application of the statutory law governing good time eligibility to take away good time credits that it had no statutory authority to award. See Lewis v. Day, 97-0111, p. 6 (La. App. 1st Cir. 2/20/98), 708 So. 2d 1152, 1155.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court, affirming the Department's decision to deny Mr. Brooks good time eligibility and dismissing his appeal with prejudice. All costs of this appeal are assessed to Terry Brooks.

AFFIRMED.

³ We also note that the good time rate option and approval form signed by Mr. Brooks provides, in part, that the signor "acknowledge[s] that the department may void this option at any time, in the event that it is determined that I am ineligible to receive good-time."