

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2014 CA 0977**

**DENNIS THOMAS**

**VERSUS**

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY  
AND CORRECTIONS, WINN CORRECTIONAL CENTER,  
TIMOTHY KEITH**

*Judgment Rendered:*

**JAN 07 2015**

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**Appealed from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Case No. C612904**

**The Honorable Todd Hernandez, Judge Presiding**

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**Dennis Thomas  
Winnfield, Louisiana**

**Plaintiff/Appellant  
In Proper Person**

**Jonathan R. Vining  
Baton Rouge, Louisiana**

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

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**BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.**

*Guidry, J. Concur.*

**THERIOT, J.**

This appeal is taken from a judgment rendered by the Nineteenth Judicial District Court reversing an administrative decision denying a prisoner's request for additional state-issued winter clothing items. For the reasons that follow, we reverse.

**FACTS AND PROCEDURAL HISTORY**

Plaintiff, Dennis Thomas, an inmate in the custody of the Louisiana Department of Public Safety and Corrections ("DPSC") and housed at Winn Correctional Center, initiated the two-step administrative remedy procedure ("ARP") on November 4, 2011 to request that prison officials provide him with "the type of clothing La. R.S. 15:705 mandates."<sup>1</sup> Mr. Thomas alleged that the prison officials were in violation of La. R.S. 15:705(A)(1), which requires that sheriffs or jailkeepers "provide the prisoners with clothing suited to and sufficient for the season," because the only winter clothing issued to prisoners at Winn Correctional Center is a button-down jacket without a hood. Mr. Thomas's ARP claim was denied on the grounds that he had been issued standard clothing according to prison policy on intake, that additional winter wear (coat) had been issued to him on October 11, 2011, and that additional items were available for purchase through the facility commissary.

After exhausting his administrative remedies, Mr. Thomas filed a petition for judicial review in accordance with La. R.S. 15:1177 on June 14, 2012, requesting that the court grant an injunction ordering prison officials to provide prisoners with "clothing suited to and sufficient for the season," as required by La. R.S. 15:705(A)(1). The record was reviewed by a

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<sup>1</sup> ARP No. WNC-2011-1085

Commissioner,<sup>2</sup> who noted that the limited information contained in the administrative record made it difficult to determine whether the prison officials had provided Mr. Thomas with clothing suited to and sufficient for the winter season. Therefore, the Commissioner recommended that the administrative decision be reversed and that the DPSC provide Mr. Thomas with “state issue items, if available, for the winter clothing requested in the claim.” After a *de novo* review, the district court rendered judgment on April 23, 2014, reversing the administrative decision and ordering the DPSC to provide Mr. Thomas with state issue items, if available, for the winter clothing requested in the claim. The district court also dismissed the petition for judicial review with prejudice at Mr. Thomas’s costs.

Mr. Thomas appeals, assigning the following errors:

1. The district court erred in requiring the Department to only provide state issue items for winter clothing requested by plaintiff if available.
2. The district court erred in charging plaintiff, not the defendant, for the costs of the appeal.

## DISCUSSION

Any offender who is aggrieved by an adverse decision by the DPSC or a contractor operating a private prison facility rendered pursuant to any ARP may, within thirty days after receipt of the decision, seek judicial review of the decision. La. R.S. 15:1177(A). Judicial review shall be conducted by the court without a jury and shall be confined to the record. La. R.S. 15:1177(A)(5). On judicial review, the court may affirm the decision or remand the case for further proceedings, or order that additional evidence be taken. La. R.S. 15:1177(A)(8). The court may reverse or

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<sup>2</sup> The office of the Commissioner of the Nineteenth Judicial District Court 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. The Commissioner’s written findings and recommendations are submitted to a district judge, who may accept, reject, or modify them. *Hakim-El-Mumit v. Stalder*, (La. App. 1 Cir. 10/29/04), 897 So.2d 112, 113 n.1.

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.

La. R.S. 15:1177(A)(9).

On appellate review of a district court's judgment in a suit for judicial review under La. R.S. 15:1177, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. *Hakim-El-Mumit*, 897 So. 2d at 113-14.

Judicial review is limited to the issues presented in the petition for review and the administrative remedy request filed at the agency level. La. R.S. 15:1177(A)(5). In his ARP, Mr. Thomas states that he wants the “type of clothing La. R.S. 15:705 mandates that I be given.” After his ARP was denied in a First Step Response Form, Mr. Thomas indicated that he was not satisfied with the response and proceeded to step two. He stated that he was not given “thermal underwear, gloves, headgear, denim jeans, nor a long

sleeve shirt” and that the coat he was given “does not suffice as complete winter wear under the applicable law.” Mr. Thomas’s ARP was denied at the second step in a Second Step Response Form. Thereafter he filed his petition for judicial review. In his petition, Mr. Thomas alleges that while inmates housed at institutions run by DPSC are provided with caps, sweaters, denim jeans, undershirts, and long sleeve denim shirts free of charge, inmates housed at Winn Correctional Center are provided only a coat and must purchase any of the additional items from the commissary. However, Mr. Thomas offered no proof of what types of winter clothing are provided to prisoners at other institutions. After a careful review of the record, we find no grounds to reverse or modify the administrative decision under La. R.S. 15:1177(A)(9). Contrary to Mr. Thomas’s assertions, La. R.S. 15:705 does not require that any specific items of winter clothing be provided to prisoners; rather, it simply requires that the clothing provided to prisoners be suited to and sufficient for the season. There was no evidence presented that the clothing provided to Mr. Thomas by prison officials does not satisfy the requirements of La. R.S. 15:705. Thus, the administrative decision must be affirmed.<sup>3</sup>

### **CONCLUSION**

The judgment of the district court reversing the administrative decision and ordering prison officials to provide Mr. Thomas with the winter clothing requested, if available, is reversed. The administrative decision is affirmed. Costs of this appeal are assessed to the plaintiff, Dennis Thomas.

**REVERSED.**

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<sup>3</sup> Having found the district court erred in reversing the administrative decision, Mr. Thomas’s second assignment of error regarding assessment of costs is moot.