

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 1127

MELVIN GATSON

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONS

***DATE OF JUDGMENT:*** MAR 06 2015

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
NUMBER C626487, DIVISION D, PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

HONORABLE JANICE CLARK, JUDGE

\* \* \* \* \*

Melvin Gatson  
Winnfield, Louisiana

Plaintiff-Appellant  
Pro Se

William L. Kline  
Baton Rouge, Louisiana

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

\* \* \* \* \*

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

**Disposition: AFFIRMED.**

CHUTZ, J.

Petitioner-appellant, Melvin Gatson, an inmate in the custody of the Louisiana Department of Safety and Corrections (DPSC), appeals the district court's judgment, dismissing with prejudice his claims that seek the reversal of a December 2007 parole revocation and habeas corpus relief to present his claims for entitlement to re-parole. We affirm.

According to the allegations of appellant's pleading, he was sentenced to prison for ten years in 1985 for "a jailhouse sex crime." He avers that in August 2002, he was released on good time parole<sup>1</sup> but that on December 5, 2007, the Louisiana Parole Board voted to revoke his parole "for failure to comply" with the sex offender registration requirements.<sup>2</sup> He claims that he has subsequently obtained proof that he has been illegally detained since the revocation and complains that although he has not waived his right to be heard on his claim for re-parole, a hearing has not been held. Naming DPSC as a defendant, appellant requests a 72-hour hearing to secure his release from custody.

The action was initially referred to a commissioner for review,<sup>3</sup> who issued a screening report recommending dismissal of the claim without service on DPSC. Following its *de novo* review of the record, the district court adopted the commissioner's recommendation and appellant's claims were dismissed by a judgment signed on March 20, 2014.

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<sup>1</sup> See La. R.S. 15:571.5 providing for supervision of prisoners upon release after diminution of sentence for good behavior; conditions of release; revocation.

<sup>2</sup> See La. R.S. 15:542 setting forth registration requirements of sex offenders and child predators.

<sup>3</sup> The offices of commissioner of the 19th Judicial District Court were 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. La. R.S. 13:713(A). The district judge "may accept, reject, or modify in whole or in part the findings or recommendations made by the commissioner and also may receive further evidence or recommit the matter to the commissioner with instructions." La. R.S. 13:713(C)(5).

Initially, we note habeas corpus claims under La. C.Cr.P. art. 362 arise from criminal proceedings and are governed by the Louisiana Code of Criminal Procedure. See La. C.Cr.P. art. 352-370. A prisoner claiming he is entitled to immediate release on such grounds must raise his challenge by a writ of habeas corpus under the criminal jurisdiction of the appropriate district court. *Madison v. Ward*, 2000-2842 (La. App. 1st Cir. 7/3/02), 825 So.2d 1245, 1254 (en banc) (superseded by statute on other grounds).

Appellant's petition states that he is presently incarcerated in Winn Parish but has filed his pleading in the 19th Judicial District Court. He has failed either to attach a copy of the court order securing his custody to his petition or allege that a copy of it has been demanded and refused. See La. C.Cr.P. art. 353. Moreover, as noted by the commissioner, appellant's petition clearly "acknowledges that his present incarceration is due to his parole having been revoked by the Parole Board after a hearing was held in 2007." And in his petition, appellant did not aver with any particularity that La. R.S. 15:574.9 is unconstitutional on its face or as applied to him. See *Vallo v. Gayle Oil Co., Inc.*, 94-1238 (La. 11/30/94), 646 So.2d 859, 865. We find no error in the district court's finding, as set forth by the commissioner in the screening report, that appellant has failed to state a cause of action for habeas corpus relief. See *Ferrington v. Louisiana Bd. of Parole*, 2003-2093 (La. App. 1st Cir. 6/25/04), 886 So.2d 455, 458, writ denied, 2004-2555 (La. 6/24/05) 904 So.2d 741; see also *Madison*, 825 So.2d at 1250 (in the criminal context, habeas corpus usually applies to pre-conviction complaints concerning custody and is not the proper procedural device for petitioners who may file applications for post-conviction relief); *Id.* at 1251 n.7 (pleadings alleging a denial of a revocation hearing under La. R.S. 15:574.9, however styled, should be reviewed on the merits by the district court acting in its appellate capacity); accord La. R.S. 15:574.11C after its amendment by 2005 La. Acts, No. 460, § 1, effective

August 15, 2005 (specifically recognized the appellate jurisdiction of the district court over pleadings alleging a violation of La. R.S. 15:574.9).

Having concluded that appellant's claim was not properly a claim for habeas corpus relief under Article 362, we find no error in the district court's implicit finding that the action was initiated "as a civil action seeking redress from a governmental entity" to which the provisions of La. R.S. 15:1188 of the Louisiana Prison Litigation Reform Act apply. See *Bernard v. Louisiana Dep't of Pub. Safety and Corrs.*, 2000-1912 (La. App. 1st Cir. 9/20/02), 843 So.2d 413 (on rehearing), writ denied, 2002-2613 (La. 1/9/04), 862 So.2d 975.

According to the pertinent provisions of La. R.S. 15:1188A:

The court shall review, before docketing if feasible or, in any event, before service on the defendants, a petition in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. On review, the court shall identify cognizable claims or dismiss the petition, or any portion of the petition, if the petition ... fails to state a claim upon which relief can be granted.

*Sua sponte*, the district court noticed its lack of subject matter jurisdiction and thereby concluded that appellant's pleading failed to state a claim upon which relief could be granted. We find no error.

By 2012 La. Acts, No. 714, Section 4, effective August 1, 2012, "the Board of Pardons functioning as the committee on parole shall be the successor to, and shall assume control of, the affairs of the Board of Parole." But on December 5, 2007, the date appellant avers his parole was revoked, La. R.S. 15:574.11, which sets forth the procedure by which a parolee may seek review of the revocation of his parole, provided in relevant part:

A. Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint, and the granting, conditions, or revocation of parole rest in the discretion of the Board of Parole. **No prisoner or parolee shall have a right of appeal from a decision of the board regarding** release or deferment of release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole

supervision or discharge from parole before the end of the parole period, or **the revocation or reconsideration of revocation of parole, except for the denial of a revocation hearing under R.S. 15:574.9....**

D. Petitions for review that allege **a denial of a revocation hearing under the provisions of R.S. 15:574.9 shall be subject to a peremptive period of ninety days after the date of revocation by the Board of Parole.** When revocation is based upon the conviction of a new felony while on parole, the ninety-day peremptive period shall commence on the date of final judgment of the new felony. **Petitions for review filed after this peremptive period shall be dismissed with prejudice.** Service of process of petitions for review shall be made upon the chairman of the Board of Parole or his designee. (Emphasis added.)

Under the plain language of the relevant version of La. R.S. 15:574.11A, appellant does not have a right of appeal from the decision of the Parole Board regarding the revocation or reconsideration of revocation of parole. Thus, the district court correctly concluded that it lacked subject matter jurisdiction over appellant's challenge of the Parole Board's decision to revoke his parole on December 5, 2007, and dismissed this claim pursuant to the commissioner's screening report.

Turning now to appellant's claim of having been denied a hearing for consideration for re-parole that he did not waive under the provisions of La. R.S. 15:574.9, we note that appellant filed his complaint for relief in the district court on November 27, 2013, claiming that he requested a hearing for re-parole consideration "during the month of June, 2012." On August 1, 2012, La. Acts 2012, No. 714, Section 4, had taken effect, and Subsection F of La. R.S. 15:574.9 stated in pertinent part, "Any such prisoner whose parole has been revoked may be considered by the committee for re-parole in accordance with the provisions of this Part," thereby referencing La. R.S. 15:574.4, which sets forth the

provisions for parole and eligibility.<sup>4</sup>

Appellant's petition seeking a hearing for re-parole avers that he "committed a rape upon another prisoner while incarcerated that was over 18 years of age" on February 19, 1984 and pled guilty to the rape on March 11, 1985. He claims to have waived his right to incentive pay in lieu of earning extra good time under La. R.S. 15:571.3 without notice of imposition of a requirement of sex offender registration. He states that on August 6, 2002, he was released on good time parole supervision under La. R.S. 15:571.5 and that his parole was revoked on December 5, 2007. The gist of his claims to entitlement to re-parole are (1) that he was not subject to the sex offender registration requirements; and (2) he was not guilty of violating any of the conditions of his release while on parole, both bases of which were taken up at his original revocation hearing. That these same claims were before the Parole Board at the hearing that resulted in his December 5, 2007 revocation of parole is underscored by Exhibit I, entitled "SECTION I/BILL OF PARTICULARS," that he attached to his pleadings filed in district court. Although he has couched his claim to entitlement to a hearing on re-parole, appellant simply seeks reconsideration of the claims already rejected by the Parole

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<sup>4</sup> According to the relevant version of La. R.S. 15:574.4 "during the month of June, 2012":

A. (1) Except as provided for in Subsection B of this Section, a person, otherwise eligible for parole, convicted of a first felony offense shall be eligible for parole consideration upon serving one-third of the sentence imposed. Upon conviction of a second felony offense, such person shall be eligible for parole consideration upon serving one-half of the sentence imposed. A person convicted of a third or subsequent felony offense shall not be eligible for parole.

(2) Notwithstanding the provisions of Paragraph (1) of this Subsection or any other law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole for thirty years or more shall be eligible for parole consideration upon serving at least twenty years of the term or terms of imprisonment in actual custody and upon reaching the age of forty-five. This provision shall not apply to a person serving a life sentence unless the sentence has been commuted to a fixed term of years. The provisions of this Paragraph shall not apply to any person who has been convicted under the provisions of R.S. 14:64.

Board.<sup>5</sup> Since appellant does not have a right of appeal from the decision of the Parole Board regarding the revocation or reconsideration of revocation of parole under the plain language of La. R.S. 15:574.11A, the district court correctly concluded that it did not have subject matter jurisdiction over appellant's claim despite the misnomer of his pleading, which indicated he was asserting a claim for re-parole.<sup>6</sup>

Lastly we note that appellant's claim that he was denied legal representation during the revocation process, raised by way of argument before the district court and again on appeal, is not properly before us. It is true that under La. R.S. 15:574.9A, the parolee subject to revocation shall be permitted to consult with and be advised and represented by his own legal counsel or legal counsel appointed under the provisions of La. R.S. 15:179 (permitting counsel to an indigent parolee "entitled by law to representation" when he requests such representation). But it is only where the parolee has alleged in his petition that his right to the procedural due process protections specifically afforded by La. R.S. 15:574.9 in connection with such a hearing were violated that an appeal is allowed. See *Leach v. Louisiana Parole Bd.*, 2007-0848 (La. App. 1st Cir. 6/6/08), 991 So.2d 1120, 1124, writs denied, 2008-2385 (La. 8/12/09), 17 So.3d 378 and 2008-2001 (La. 12/18/09), 23 So.3d 947. More importantly, any claim for a lack of legal representation appellant may have had is preempted under the provisions of La. R.S. 15:574.11D, because it was asserted more than ninety days after the date of revocation by the Board of Parole, thereby mandating dismissal of the petition.

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<sup>5</sup> Issues pertaining to the Parole Board's determination of the credibility of witnesses, its weighing of evidence, and whether there were sufficient facts to support the revocation of parole are the types of challenges to the Parole Board's decision clearly not allowed by La. R.S. 15:574.11A, which provides that "revocation of parole [rests] in the discretion of the Board of Parole." See *Leach v. Louisiana Parole Bd.*, 2007-0848 (La. App. 1st Cir. 6/6/08), 991 So.2d 1120, 1125, writs denied, 2008-2385 (La. 8/12/09), 17 So.3d 378 and 2008-2001 (La. 12/18/09), 23 So.3d 947.

<sup>6</sup> Appellant has not alleged sufficient facts to fall within the ambit of La. R.S. 15:574.4A relative to his claimed entitlement to re-parole. See La. R.S. 15:574.9F.

For all these reasons, the district court correctly concluded that it lacked subject matter jurisdiction over appellant's claims. And because appellant's pleading fails to state a claim upon which relief can be granted, the dismissal of appellant's petition at his cost without service on DPSC was proper under La. R.S. 15:1188.

**DECREE**

The district court's judgment dismissing the petition of appellant at his cost without service on defendant, the Louisiana Department of Safety and Corrections, is affirmed. Appeal costs are assessed against petitioner-appellant, Melvin Gaston.

**AFFIRMED.**