

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 1681

JUSTIN GALLOW

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: JUN 05 2015

Handwritten signatures and initials on the left side of the page, including a large signature that appears to be 'JMM' and another signature below it, along with some initials.

* * * * *

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER C625754, SECTION "23"

HONORABLE WILLIAM A. MORVANT, JUDGE

* * * * *

Justin Gallow
Winnfield, Louisiana

Plaintiff/Appellant
Pro Se

Jonathan R. Vining
Baton Rouge, Louisiana

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

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

McDONALD, J.

An inmate in the custody of the Department of Public Safety and Corrections (DPSC) appeals from a judgment dismissing his petition for judicial review of an administrative decision concerning the calculation of his sentence. For the following reasons, we affirm the dismissal of the petition.

FACTUAL AND PROCEDURAL HISTORY

On December 17, 2007, after he accepted a plea agreement, Justin Gallow was convicted of manslaughter and attempted manslaughter. The district court sentenced him to 25 years imprisonment at hard labor on the manslaughter conviction and to 15 years imprisonment at hard labor on the attempted manslaughter conviction. According to a minute entry in the record, the district court ordered the sentences to run concurrently and that both sentences were "subject to the 85% rule."

In 2011, while incarcerated at Winn Correctional Center (WCC) in Winnfield, Louisiana, Mr. Gallow filed a request for administrative remedy to have his sentence reviewed, which was assigned Case Number WNC-2012-8. He urged that, although he had been sentenced to serve 25 years imprisonment with the "special condition" of the 85% rule, his rap sheet showed that whoever calculated his sentence had incorrectly done so "under Act 150, which is flat time." WCC and DPSC officials denied Mr. Gallow's request at the first step and second step response levels. In its response, DPSC concurred with the WCC's response and explained the denial as follows:

This will advise that your concerns were adequately addressed by the first step response to WNC-2012-8. As explained, you are not eligible for good time consideration. By law, according to [LSA-R.S.] 15:571.3(D), diminution of sentence shall not be allowed for an offender if the instant offense is a second offense crime of violence as defined by [LSA-R.S.] 14:2(B). Your conviction on Docket No. 6503, dated 9/4/2003 for [a]ggravated [b]attery was your first crime of violence. Your current instant offense is manslaughter, therefore your time has been correctly calculated under Act 150.[¹]

Mr. Gallow then filed a motion to enforce his plea agreement in the district court where he was convicted. The sentencing judge held a hearing on the motion, at which time he reviewed the

¹ "Act 150" became effective August 27, 1994 and amended LSA-R.S. 15:571.3(D) to deny "good time" credit to an inmate in custody who has committed a second offense crime of violence. 1994 La. Acts, 3d Ex. Sess., No. 150, §1.

plea agreement and the sentence imposed, and then denied Mr. Gallow's motion. Mr. Gallow sought review of the ruling in the Third Circuit, and his writ application was denied. **State v. Gallow**, KH 13-00100 (La. App. 3 Cir. 3/21/13) (unpublished writ action). Mr. Gallow then filed a petition for judicial review in the Nineteenth Judicial District Court, and DPSC filed an answer. A district court commissioner recommended that Mr. Gallow's petition be dismissed. After reviewing Mr. Gallow's traversal of the commissioner's recommendation, the district court dismissed his petition without prejudice. Mr. Gallow appealed.

DISCUSSION

Basically, Mr. Gallow argues DPSC has improperly calculated his sentence to require that he remain incarcerated longer than 85% of 25 years, the sentence he contends was imposed by the district court.

The district court's observation that the defendant's sentences were "subject to the 85% rule" was a reference to LSA-R.S. 15:574.4(B)(1), which requires that a person convicted of a crime of violence, and not otherwise ineligible for parole, shall serve at least 85% of the sentence imposed, before being eligible for parole. The statute does not state, nor is there evidence that the district court indicated, that Mr. Gallow would **only** have to serve 85% of his 25 year sentence. Mr. Gallow erred in interpreting the terms of his sentence otherwise. Further, Mr. Gallow is ineligible for diminution of sentence under LSA-R.S. 15:571.3(D), because such shall not be allowed an inmate in the custody of the DPSC if the instant offense is a second offense crime of violence as defined by LSA-R.S. 14:2(B). Mr. Gallow does not dispute that he has two convictions for crimes of violence. Thus, notwithstanding the district court's reference to the "85% rule," as noted by the commissioner, DPSC was bound to impose the prohibition in LSA-R.S. 15:571.3(D), which applies to any person who has been convicted of two or more crimes of violence after 1994.

CONCLUSION

After a thorough review, we find that the record amply supports the district court's judgment, rendered in accordance with the recommendation of the commissioner. Accordingly, the district court's July 28, 2014 judgment, dismissing Mr. Gallow's petition for judicial review without prejudice, is affirmed. No costs are assessed in this pauper suit.

AFFIRMED.