

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 0795

TRACY BILLY KENT D.O.C. #100930

VERSUS

DEPARTMENT OF CORRECTIONS, JAMES LEBLANC, SECRETARY

Judgment Rendered: DEC 23 2015

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Appealed from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Trial Court Number 636357 Sec. 24

Honorable R. Michael Caldwell, Judge

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Tracy Billy Kent  
Harrisonburg, LA

Appellant  
Pro Se

William L. Kline  
Baton Rouge, LA

Attorney for Appellee  
Louisiana Department of Public  
Safety and Corrections

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**BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.**

**WELCH, J.**

Tracy Billy Kent, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the “Department”), appeals a judgment of the district court dismissing his petition for judicial review of Administrative Remedy Procedure (“ARP”) No. HDQ-2014-1504 on the basis of Kent’s failure to timely seek judicial review. For reasons that follow, we affirm the district court’s judgment in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.2(A)(2), (4), (5), (6), and (10).

Louisiana Administrative Code 22:I.325 outlines the rules and procedures to be followed in formally addressing inmate complaints in adult institutions in Louisiana. **Dickens v. Louisiana Correctional Institute for Women**, 2011-0176 (La. App. 1<sup>st</sup> Cir. 9/14/11), 77 So.3d 70, 74. It requires inmates to use the procedure set forth therein, the two-step ARP, before they can proceed with a suit in federal or state court. *Id.* See LAC 22:I.325 (F)(3)(a)(viii)(b) and (J)(1).

Louisiana Revised Statutes 15:1177(A) provides that any offender aggrieved by an adverse decision of the Department may seek judicial review “within thirty days after receipt of the decision.” The thirty-day period provided by La. R.S. 15:1177(A) is preemptive rather than prescriptive. **Carter v. Lynn**, 93-1583 (La. App. 1<sup>st</sup> Cir. 5/20/94), 637 So.2d 690, 691. If an offender fails to seek judicial review in the district court within thirty days after receiving the adverse decision of the Department, his right to relief ceases to exist and the reviewing court lacks jurisdiction. **Carter**, 637 So.2d at 691.

On January 13, 2015, Kent filed a petition for judicial review of ARP HDQ-2014-1504.<sup>1</sup> Essentially, in his ARP complaint, Kent argued that the Department had failed to carry out his sentence in accordance with his plea agreement because

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<sup>1</sup> Kent named “Department of Corrections” and “James LeBlanc, Secretary” as defendants in his petition for judicial review. However, the only proper defendant in an administrative appeal filed by a prisoner is the Louisiana Department of Public Safety and Corrections. See La. R.S. 15:1177(A)(1)(b).

he was not receiving jail credit from a prior offense (in Harris County, Texas) on his current sentence (from Jefferson Parish, Louisiana), when his current sentence was ordered to run concurrently with the sentence for the prior offense. In Kent's petition, he acknowledged that on June 10, 2014, the Department issued its second-step response denying the relief requested in the ARP.<sup>2</sup> According to the Department's second-step response, which was attached to Kent's petition, the ARP was denied on the basis that Kent had received all of the jail credit to which he was entitled on the current sentence, as he had already received jail credit on his sentence from the prior offense.

Since Kent's suit was filed approximately seven months after the Department issued its second-step response (well beyond the thirty-day preemptive period provided by La. R.S. 15:1177(A)), on January 23, 2015, the commissioner assigned to the matter<sup>3</sup> issued a rule to show cause why the suit should not be dismissed for lack of jurisdiction based on the failure to timely seek judicial review. Kent filed a response to the rule to show cause<sup>4</sup> and thereafter, on February 7, 2015, the commissioner issued a report recommending that Kent's suit be dismissed for lack

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<sup>2</sup> In the petition, Kent also stated that he filed a request for third-step review in June 2014, but had received no response. The record before us contains a request for third-step review by Kent, but does not contain a third-step response by the Department. However, the current provisions of the ARP only require the inmate to complete the second step of the ARP process prior to filing suit. See LAC 22:I.325(F)(3)(a)(viii)(b) and 22:I.325(J)(1); see also **Collins v. Vanny**, 2014-0675 (La. App. 1<sup>st</sup> Cir. 1/15/15), 169 So.3d 405, 407 (providing that if the Department has effectively precluded an inmate from proceeding to review by the district court by failing to issue its decisions as directed by the ARP provisions, the administrative remedies will be considered to have been pursued by the inmate to the fullest extent possible under the circumstances, and the inmate will be allowed to seek a legal remedy in the district court).

<sup>3</sup> See La. R.S. 13:713; **Rochon v. Whitley**, 96-0835 (La. App. 1<sup>st</sup> Cir. 2/14/97), 691 So.2d 189, 191 n.2.

<sup>4</sup> In response to the rule to show cause, Kent did not dispute that he filed his January 13, 2015 petition for judicial review more than thirty days after his receipt of the Department's second-step decision. In his signed response, Kent noted that on June 10, 2014, the Department issued the second-step response denying his ARP and that he "immediately recognized the misunderstanding" of the Department with respect to his ARP. Kent then stated that the Department's second-step response prompted him, on June 23, 2014, to file a third-step request for review of his ARP. After ninety days had passed with no response from the Department on the third-step request for review, on October 30, 2014, Kent filed a motion to correct an illegal sentence with the sentencing court (in Jefferson Parish), which was denied November 10, 2014, on the basis that Kent's exclusive remedy was through the provisions set forth in La. R.S. 15:1171-1179. Kent signed his petition for judicial review on December 18, 2014, and it was filed on January 13, 2015. Thus, Kent's petition was untimely on its face. See LAC 22:I.325(J)(1).

of jurisdiction because it was filed more than thirty days after Kent received the Department's second-step decision denying his ARP.

After considering the entire record of the proceedings, the district court adopted the commissioner's recommendation and rendered and signed a judgment dismissing Kent's petition at his cost on March 23, 2015. After a thorough review of the record of these proceedings, we find no error in and affirm the judgment of the district court dismissing Kent's untimely petition for judicial review. All costs of this appeal are assessed to the plaintiff/appellant, Tracy Billy Kent.

**AFFIRMED.**