

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 0990

ROBERT BISHOP

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: DEC 23 2015

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On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C635669

Honorable Timothy Kelley, Judge Presiding

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Robert Bishop
Richland Parish Detention Center
Rayville, Louisiana

Plaintiff/Appellant
In Proper Person

William L. Kline
Baton Rouge, Louisiana

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

*** * * * ***

BEFORE: McDONALD, McCLENDON, AND THERIOT, JJ.

McCLENDON, J.

An inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department) seeks review of a district court judgment that dismissed his suit without prejudice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On December 29, 2014, Robert E. Bishop filed a Petition for Writ of Habeas Corpus in the 19th Judicial District Court. Mr. Bishop alleged that while he was on parole in 2009, his parole officer induced him to sign a revocation of parole under false pretenses, and as a result Mr. Bishop relinquished his right to revocation proceedings.

Pursuant to the requirements of LSA-R.S. 15:1178 and LSA-R.S. 15:1188, Mr. Bishop's petition was screened by a Commissioner at the Nineteenth Judicial District Court.¹ The Commissioner, in her February 3, 2015 screening report, took notice of a suit previously filed by Mr. Bishop that challenged his 2009 revocation (19th Judicial District Court suit number 588,628). The prior suit had been dismissed as untimely. Following her review of the prior suit, the Commissioner noted:

This Commissioner sees no reason to address a claim previously raised and adjudicated. The Petitioner's claim is [duplicative] and frivolous in that his claims remain unchanged. They were untimely in 2010 and they are untimely now even though raised in a different procedural vehicle. As such, this Court has no authority or jurisdiction to entertain the Petitioner's complaint in its current form in that Petitioner fails to state a cause of action or cognizable claim for relief and because this suit is frivolous and [duplicative].

Thereafter, the district court, on the Commissioner's recommendation, dismissed the suit without prejudice.

Mr. Bishop has appealed to seek review of the district court's judgment.

¹ The office of commissioner for the Nineteenth Judicial District Court was created by LSA-R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. **Owens v. Stalder**, 06-1120 (La.App. 1 Cir. 6/8/07), 965 So.2d 886, 888 n. 6.

DISCUSSION

As noted by the Commissioner, the same allegations that Mr. Bishop raises in the instant suit were previously raised in suit number 588,628. In the prior suit, which was filed on March 17, 2010, Mr. Bishop alleged that his parole officer misinformed him regarding the consequences of signing the waiver. As a result, Mr. Bishop contended that he mistakenly forfeited any right to any hearings before the parole board. Mr. Bishop sought reinstatement of his parole, but the parole board dismissed Mr. Bishop's request because it was time barred insofar as it was not filed within ninety days as required by LSA-R.S. 15:574.11(D). The 19th Judicial District Court, based upon the Commissioner's recommendation, dismissed Mr. Bishop's petition for judicial review in suit number 588,628.

Mr. Bishop then appealed that decision to this court. In affirming the district court, this court noted:

As stated in a June 10, 2009 letter to Bishop from the parole board, the parole board reviewed his file and "accepted" his guilty plea to violating the conditions of his parole. Furthermore, the waiver signed by Bishop stated in pertinent part: "In signing this waiver, I fully understand that I waive my rights and privileges to a final parole violation hearing before the Board of Parole, and that the Board, *in all probability*, will REVOKE my parole pursuant to La. R.S. 15:574.9A." (Emphasis added.)

More importantly, however, is that in his petition for judicial review, Bishop pointedly contests the revocation of his parole because he was denied a revocation hearing, which he alleges was due to the actions of his parole officer. Louisiana Revised Statute 15:574.11(D) provides that petitions for review that allege a denial of a revocation hearing "shall be subject to a preemptive period of ninety days after the date of revocation by the Board of Parole." Preemption is a period of time fixed by law for the existence of a right, which, if not timely exercised, is extinguished upon the expiration of the preemptive period. La. C.C. art. 3458. Moreover, preemption may not be renounced, interrupted, or suspended. La. C.C. art. 3461. Thus, despite his mistaken beliefs and the bad advice he allegedly received, once the 90-day period fixed by La. R.S. 15:574.11(D) expired, Bishop's right to file a petition for judicial review for having been allegedly "denied" a revocation hearing was extinguished. [Footnotes omitted.]

Bishop v. Clements, 11-2013 (La.App. 1 Cir. 6/8/12)(unpublished opinion), 2012 WL 2061431.

The issues raised in Mr. Bishop's instant Petition for Writ of Habeas Corpus were addressed by the district court in suit number 588,628 and subsequently

considered by this court on appeal. Specifically, the prior suit and this suit arise from the denial of a revocation hearing based on alleged misrepresentations by Mr. Bishop's parole officer. Because these issues have been previously litigated and decided, we find no error in the district court's ruling. For these reasons, we affirm the district court's judgment. Costs of this appeal are assessed to Robert E. Bishop.

AFFIRMED.