

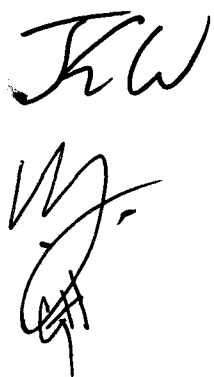
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 CA 0523



CRAIG VICTORIAN

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONS

Judgment Rendered: DEC 22 2016

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 638942

Honorable William A. Morvant, Judge

* * * * *

Craig Victorian
Cottonport, LA

Pro se – Appellant
Plaintiff – Craig Victorian

Debra A. Rutledge
Baton Rouge, LA

Attorney for Appellee
Defendant – Louisiana Department
of Safety and Corrections

* * * * *

BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

WELCH, J.

Craig Victorian, 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 No. AVC-2015-74 (“ARP”) and affirming the Department’s final decision in the matter.

Victorian was convicted of aggravated battery for an offense that he committed on August 12, 1987. Victorian subsequently pled guilty to manslaughter for an offense that he committed on October 18, 1994. On the manslaughter offense, Victorian was sentenced on January 1, 1996 to a term of forty years at hard labor in the custody of the Department. Notably, at the time that Victorian committed the aggravated battery offense (August 12, 1987), aggravated battery was not classified as a crime of violence pursuant to La. R.S. 14:2(B); however, at the time Victorian committed the manslaughter offense (October 18, 1994), both aggravated battery and manslaughter were classified as crimes of violence pursuant to La. R.S. 14:2(B).

While in the custody of the Department on the manslaughter sentence, the Department denied Victorian good-time eligibility based on La. R.S. 15:571.3(D),¹ which provides that good-time (or diminution of sentence) “shall not be allowed an inmate in the custody of the [Department] if the instant offense is a second offense crime of violence as defined by [La.] R.S. 14:2(B).” In Victorian’s ARP, he essentially claimed that he was entitled to good-time, that his 1987 aggravated battery offense should not be deemed a crime of violence for purposes of determining his eligibility to earn good-time on the manslaughter sentence, and that the decision to deny his ability to earn good-time pursuant to La. R.S.

¹ This statute was referred to as “Act 150” by the Department. See 1994 La. Acts, 3rd Ex. Sess., No. 150, § 1.

15:571.3(D) violated the *ex post facto* clauses of the constitutions of Louisiana and the United States.² The Department denied the relief sought, maintaining that Victorian was not eligible to earn good-time on his manslaughter sentence because it was his second crime of violence as defined by La. R.S. 14:2(B). Victorian then instituted this proceeding, seeking judicial review of the Department's decision.

On November 24, 2015, the commissioner assigned to the matter issued a report recommending to the district court that the Department's decision be affirmed and that Victorian's petition be dismissed. The commissioner noted that when Victorian committed the manslaughter offense, he was on notice that aggravated battery had become classified as a crime of violence and that if he committed another crime of violence, the prohibition against good-time would be applicable to his second sentence. Thus, there was no *ex post facto* application of the law or other due process violation in the Department's decision. Accordingly, the commissioner concluded that Victorian failed to establish that the Department's decision was arbitrary, capricious, manifestly erroneous, or in violation of his statutory or constitutional rights and recommended that the Department's decision be affirmed. After considering the entire record of these proceedings, on January 21, 2016, the district court adopted the commissioner's recommendation and rendered judgment dismissing Victorian's petition and affirming the Department's decision.

After a thorough review of the record of these proceedings, we find no error in the judgment of the district court. It is well-settled that the law in effect at the time of the commission of an offense determines the penalty that the accused must suffer. **Massey v. Louisiana Dept. of Public Safety and Corrections**, 2013-2789 (La. 10/15/14), 149 So.3d 780, 783. At the time Victorian committed the manslaughter offense, both manslaughter and aggravated battery were classified as

² See La. Const. art. I, § 23 and U.S. Const. art. I, § 10.

crimes of violence under La. R.S. 14:2(B); hence, he was not eligible for good-time on the manslaughter sentence. See La. R.S. 15:571.3(D). Further, Victorian has only been denied eligibility to seek an early release from the physical custody of the Department; his criminal penalty for manslaughter has not been increased. Thus, Victorian is not being subjected to an *ex post facto* application of the criminal law.³ Therefore, we affirm the judgment of the district court in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.2(A)(4), (5), (6), (7), and (8). In accord **Pratt v. LeBlanc**, 2013-0833 (La. App. 1st Cir. 1/8/13) (*unpublished*) 2013 WL 85289, writ denied, 2013-0268 (La. 6/14/13), 118 So.3d 1083. See also **Dixon v. Louisiana Dept. of Public Safety and Corrections**, 2014-1400 (La. App. 1st Cir. 4/24/15) (*unpublished*) 2015 WL 1882609.

All costs of this appeal are assessed to the plaintiff/appellant, Craig Victorian.

AFFIRMED.

³ Article I, § 23 of the Louisiana Constitution and Article I, § 10 of the United States Constitution prohibit applying criminal laws *ex post facto*. Traditionally, Louisiana courts have held that in order for a criminal or penal law to fall within this prohibition, the law had to be passed after the date of the offense, relate to that offense or its punishment, and alter the situation of the accused to his disadvantage. **State ex rel. Oliveri v. State**, 2000-0172, 2000-1767 (La. 2/21/01), 779 So.2d 735, 743-744, cert. denied, 533 U.S. 936, 121 S.Ct. 2566, 150 L.Ed.2d 730 (2001). However, in **Oliveri**, the supreme court narrowed the focus of *ex post facto* analyses in Louisiana. While the court recognized that in previous *ex post facto* analysis, Louisiana jurisprudence had broadly focused on whether the change in the law operated to the disadvantage of an accused, the court adopted the current federal approach to *ex post facto* analysis, which focused on whether any change in the law altered the definition of criminal conduct or increased the penalty by which the crime was punishable. **Oliveri**, 779 So.2d at 744. See **Pratt v. LeBlanc**, 2012-0833 p.1 n.2 (La. App. 1st Cir. 1/8/13) (*unpublished*) 2013 WL 85289, writ denied, 2013-0268 (La. 6/14/13), 118 So.3d 1083.