

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 CA 1663

MICHAEL RENE BENBOW

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONS

Judgment Rendered: SEP 28 2017

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On Appeal from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Trial Court No. 633,556

Honorable Donald R. Johnson, Judge Presiding

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William L. Kline  
Baton Rouge, LA

Attorney for Defendant-Appellee,  
Louisiana Department of Public  
Safety and Corrections

Michael Rene Benbow  
Tallulah, LA

Plaintiff-Appellant  
In Proper Person

\* \* \* \* \*

BEFORE: MCCLENDON, HIGGINBOTHAM, AND HOLDRIDGE, JJ.

## **HIGGINBOTHAM, J.**

Michael Benbow, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment of the district court, dismissing his “Application for Writ of Review and/or Writ of Certiorari and Prohibition to Vacate an Illegal and/or Unconstitutional Multiple Offender’s Sentence” without prejudice.

On July 13, 2011, in the Twenty-Second Judicial District Court, Mr. Benbow pled guilty to distribution of a schedule II controlled dangerous substance within 1,000 feet of a school or recreational park. He was sentenced to ten years at hard labor without the benefit of parole, probation, or suspension of sentence. Subsequently, the State filed a habitual offender bill of information, and through Mr. Benbow’s admission to the allegations in the habitual offender bill, the district court found Mr. Benbow to be a second felony offender and sentenced him to seventeen years at hard labor without the benefit of parole, probation, or suspension of sentence.

On September 16, 2014, Mr. Benbow filed an application for writ of review with the Nineteenth Judicial District Court, naming DPSC as defendant and alleging that his habitual offender sentence is illegal in that the district court imposed the seventeen-year sentence as a habitual offender, but failed to vacate the ten-year sentence. In accordance with the screening requirements required by La. R.S. 15:1178(B),<sup>1</sup> the commissioner found Mr. Benbow’s claim was subject to judicial review under the Corrections Administrative Remedy Procedure (CARP) La. R.S. 15:1177, *et. seq.*

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<sup>1</sup> La. R.S. 1178(B) provides:

The court, as soon as practicable after receiving the petition, shall review the petition to determine if the petition states a cognizable claim or if the petition, on its face, is frivolous or malicious, or fails to state a cause of action, or seeks monetary damages from a defendant who is immune from liability for monetary damages.

The commissioner reviewing Mr. Benbow's writ application recommended that it be dismissed without prejudice for lack of subject matter jurisdiction based on a failure to exhaust administrative remedies, pursuant to La. R.S. 15:1177, *et. seq.* In accordance with the commissioner's recommendations, the district court signed a judgment on August 31, 2016, dismissing the matter without prejudice. Mr. Benbow appealed.

Mr. Benbow contends that DPSC knew that by failing to vacate the original sentence it would subject him to an illegal or unconstitutional multiple offender's sentence. Upon review of the record, it is clear that the only issue Mr. Benbow raised to DPSC was that the sentence imposed by the district court was illegal or unconstitutional. This is not a claim appropriate for disposition through CARP, because DPSC had no power to alter Mr. Benbow's sentence. See **Madison v. Ward**, 2000-2842 (La. App. 1st Cir. 7/3/02), 825 So.2d 1245, 1255 (en banc). Instead, this claim should have been raised either through a timely motion for reconsideration of sentence directed to the sentencing court (La. Code Crim. P. art. 881.1), timely direct appeal of that sentence to the appropriate court of appeal, or at any time by a motion to correct illegal sentence (La. Code Crim. P. art. 882(A)) directed to the sentencing court. See **Madison**, 825 So.2d at 1255. The record does not indicate whether Mr. Benbow attempted to challenge his sentence through any of the appropriate, available, procedural vehicles. We further observe that, because Mr. Benbow was sentenced in St. Tammany Parish, the Nineteenth Judicial District Court would not have had jurisdiction over such a challenge. See **Madison**, 825 So.2d at 1255.

For the above and foregoing reasons, this appeal is dismissed. All costs associated with the appeal are assessed to Michael Benbow.

**APPEAL DISMISSED.**