

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 0287

CHARLES KENNETH WALLACE, SR.

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS

Judgment rendered: SEP 28 2017

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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. C643187, Sec. 24

The Honorable R. Michael Caldwell, Judge Presiding

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Charles Kenneth Wallace, Sr.
David Wade Correctional Center
Homer, LA

Plaintiff/Appellant
In Proper Person

Susan Wall Griffin
Baton Rouge, LA

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

BEFORE: HIGGINBOTHAM, HOLDRIDGE, AND PENZATO, JJ.

GA
TMH
ahp

HOLDRIDGE, J.

Charles Kenneth Wallace, Sr., a prisoner in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals the trial court's dismissal of his 42 U.S.C. § 1983 claim as frivolous and for failure to state a claim upon which relief can be granted pursuant to La. R.S. 15:1184. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On May 12, 2015, Wallace, who was housed at the David Wade Correctional Center, initiated the two-step administrative remedy procedure (ARP) arguing that the no-smoking policy at the Correctional Center violated his rights of equal protection, freedom of religion, free speech, and freedom of association. On June 23, 2015, Wallace's ARP claim was denied on the grounds that "as an incarcerated offender, [Wallace was] subject to the rules, regulations, policies, and procedures of the Louisiana Department of Corrections ... [s]moking is not a right nor is it a liberty of interest."

After exhausting his administrative remedies, Wallace filed a petition for judicial review with the trial court in accordance with La. R.S. 15:1177, requesting that the trial court stop "any and all no-smoking rules, regulations, policies, statutes[,] etc., relative as applied to [Wallace]." The record was reviewed by the Commissioner,¹ who issued a report concluding that Wallace failed to state a cause of action or cognizable claim pursuant to La. R.S. 15:1184 because he failed to raise a "substantial right" violation. Therefore, the Commissioner recommended that Wallace's appeal be dismissed without prejudice for failure to state a claim.

¹ The office of the Commissioner of the Nineteenth Judicial District Court was created by La. R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. The Commissioner's written findings and recommendations are submitted to a district judge, who may accept, reject, or modify them. Hakim-El-Mumit v. Stalder, 2003-2549 (La. App. 1 Cir. 10/29/04), 897 So.2d 112, 113 n.1.

After a *de novo* review of the record, the trial court signed a judgment on October 20, 2016, dismissing the matter without prejudice. From this judgment, Wallace appeals.²

We find the Commissioner's report, which we adopt herein and attach as "Appendix A" provides a correct analysis of the applicable law regarding Wallace's claim. Accordingly, after a thorough *de novo* review of the record, we conclude that the trial court properly dismissed Wallace's petition for judicial review. We issue this summary opinion in accordance with the Uniform Rules-Courts of Appeal, Rule 2-16.2(A)(2), (5), (6), and (10). The judgment of the trial court is hereby affirmed. Charles Kenneth Wallace, Sr. is to pay all costs of this appeal.

AFFIRMED.

"Appendix A"

CHARLES KENNETH WALLACE DOC # 093248

VS.

LOUISIANA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS

NUMBER C643, 187 SECTION: 24

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COMMISSIONER'S REPORT

The Petitioner, an inmate in the custody of the Department of Public Safety and Corrections filed this suit, appealing the secretary's denial of Administrative Remedy #DWCC-2015-444. Pursuant to law, this Report is issued for the Court's

² We note that Wallace did not comply with Uniform Rules-Courts of Appeal, Rule 2-12.4., which requires that an appellant properly designate assignments of error in their brief. Despite the improper form of Wallace's brief, we will consider the merits of his appeal.

de novo consideration and adjudication, recommending the dismissal of the Petitioner's claim for failure to raise a substantial right violation.

ANALYSIS OF THE FACTS AND LAW

The scope of this Court's review is limited by [La.] R.S. 15:1177(A)(5) & (9), which states, in pertinent part, as follows:

(5) The review shall be conducted by the Court without a jury and shall be confined to the record. The review shall be limited to the issues presented in the petition for review and the administrative remedy request filed at the agency level.

(9) The court may reverse or modify the decision **only if substantial rights of the appellant have been prejudiced** because the administrative findings, inferences, conclusions or decisions are:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the Agency;
- c. Made upon unlawful procedure;
- d. Affected by other error of law;
- e. Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion; or
- f. Manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. (Emphasis added by Commissioner).

NO CAUSE OF ACTION OR COGNIZABLE CLAIM BECAUSE NO
SUBSTANTIAL RIGHT

In this case, the Petitioner originally complained to the prison administration that the smoking ban, imposed on all inmates is a violation of constitutional rights. He asks this Court to reverse the Secretary's decision and deem the no smoking implementation unconstitutional, require the department to give him access to tobacco smoking materials, and that he be provided approximately 4,632 cartons of various brands of cigarettes, and for compensation via punitive damages.

For reasons hereinafter set forth, the final decision must be affirmed because the Petitioner fails to state a cause of action or cognizable claim for any relief because he fails to set forth a “substantial right violation,” a prerequisite to this Court’s authority to overturn or modify any agency decision herein, and alternatively because the secretary’s denial is neither arbitrary nor manifestly erroneous, but is in accord with the promulgated regulations of the Department.

DETERMINATION OF SUBSTANTIAL RIGHT VIOLATION:

As stated hereinabove, with regard to the appeal, pursuant to the restriction in subsection nine of [La.] R.S. 15:1177 (A), this Court may only intervene or reverse and/or modify the Department’s decision in this matter if a substantial right of the Petitioner has been prejudiced. The jurisprudence clearly shows that a substantial right is analogous to a due process right, in that it is limited to one in which the Petitioner has a “liberty interest”, i.e. a right to or a right to be free from.³

“The due process clause does not protect against every change and conditions of confinement which has a substantial adverse effect upon a prisoner.” Sandin v. Conner, [515 U.S. 472,] 115 S.Ct., 2293, 2297 [sic] [1995], citing Meachum v. Fano, [427 U.S. 215] 96 S.Ct. 253[2] [49 L.Ed.2d 451 (1976).]

“As long as the condition or degree of confinement to which the prison[er] is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the due process clause does [not] in itself subject an inmate’s treatment by prison[er] authorities to judicial oversight.[”] Montanye v. Haymes, [427 U.S. 236,] 96 S.Ct.[.] [2543, 2547] [sic] [49 L.Ed.2d 466 (1976).]

“Whether any procedural protections are due depends on the extent to which an individual will be [‘]condemned to suffer, grievous loss’.” Morrissey v. Brewer, [408 U.S. 471, 481,] 92 S.Ct. [sic] 2593 [2600, 33 L.Ed.2d 484] (1972)[.]

³ See Sandin v. Conner, 115 S.Ct. 2293 (1995)[.]

Consequently, this appeal should be dismissed for reasons hereinabove stated.

COMMISSIONER'S RECOMMENDATION

Therefore, after a careful consideration of the Petition and all attachments thereto and finding that the Petitioner fails to present a substantial right violation, and thus fails to state a cause of action or cognizable claim for which relief can be granted, it is the recommendation of this Commissioner that this appeal be dismissed at the Plaintiff's cost in accordance with [La.] R.S. 15:1178 and that the claim for damages not be as part of the appeal, or alternatively dismissed without prejudice for failure to state a claim pursuant to [La.] R.S. 15:1184.

Respectfully recommended this 26th day of September, 2016, at Baton Rouge, Louisiana.

QUINTILLIS K. LAWRENCE /s/

COMMISSIONER, SECTION B

NINETEENTH JUDICIAL DISTRICT COURT