

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 0386

JOSHUA MENESSES #506389

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONS

Judgment Rendered: NOV 16 2017

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER C641898

HONORABLE TODD HERNANDEZ, JUDGE

Joshua Menesses
Rayburn Correctional Center
Angie, Louisiana

Plaintiff/Appellant
Pro Se

William L. Kline
Baton Rouge, Louisiana

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

BEFORE: WHIPPLE, C.J., McDONALD, AND CHUTZ, JJ.

McDONALD, J.

The plaintiff, Joshua Menesses, is an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), who is serving multiple sentences, including a 15-year sentence for conviction of possession of a firearm by a person convicted of certain felonies, a violation of La. R.S. 14:95.1, and a 17-year sentence for simple burglary of an inhabited dwelling, a violation of La. R.S. 14:62.2. He filed Administrative Remedy Procedure (ARP) No. HDQ-2015-2156 with the DPSC, complaining that the DPSC had improperly classified him as parole ineligible until he completed his entire 15-year sentence for conviction of La. R.S. 14:95.1 (a completion date of February 26, 2023). In response, the DPSC maintained that Mr. Menesses's sentence was properly calculated and denied him relief in the ARP proceeding. After Mr. Menesses exhausted his ARP remedies, he filed a petition for judicial relief in the Nineteenth Judicial District Court on August 31, 2015.

While acknowledging in his petition for judicial relief that the La. R.S. 14:95.1 sentence is not parole eligible, Mr. Menesses maintained that he was eligible to earn good time diminution on that sentence. He further contended that with good time credit applied to the La. R.S. 14:95.1 sentence, he completed his mandatory prison term for that sentence on January 26, 2015, and after that date, the La. R.S. 14:95.1 sentence should not control his parole eligibility for his overlapping 17-year sentence on the La. R.S. 14:62.2 sentence. Thus, according to Mr. Menesses, he should have been eligible for parole consideration for the La. R.S. 14:62.2 sentence on or about August 26, 2016. Mr. Menesses asked that his master prison record be amended accordingly. The DPSC filed an answer to the petition, maintaining that the sentence computations had been properly calculated.

The matter proceeded to consideration by the commissioner¹ of the Nineteenth Judicial District Court. The commissioner's report noted that Mr. Menesses was sentenced to 15 years at hard labor for being a felon in possession of a firearm and calculated that his sentence for that conviction will be completed on February 26, 2023, at which time he will be eligible for parole consideration on his 17-year sentence for simple burglary of an inhabited dwelling. The commissioner found that Mr. Menesses's sentence under La. R.S. 14:95.1, possession of a firearm by a person convicted of certain felonies, was parole ineligible. Therefore, the commissioner found that the DPSC's determination of Mr. Menesses's first eligible date for parole consideration was correct and that the DPSC decision should be upheld. The commissioner recommended that Mr. Menesses's petition for judicial review be dismissed with prejudice at his cost.

After *de novo* consideration of the administrative record, the district court affirmed the DPSC decision and dismissed Mr. Menesses's petition at his cost. The district court judgment was signed on October 24, 2016.

Mr. Menesses filed a writ application with this court. On February 6, 2017, this court found that the October 24, 2016 judgment dismissing Mr. Menesses's petition for judicial review was a final, appealable judgment. This court granted the writ for the limited purpose of remanding the case to the district court, with instructions to grant the relator an appeal pursuant to his notice of intent to seek writs filed on November 18, 2016. Additionally, this court ordered that a copy of this court's order be included in the appellate record. **Joshua Menesses v. Louisiana Department of Public Safety and Corrections**, 2016 CW 1533 (La. App. 1 Cir. 2/6/17). On remand, the district court granted Mr. Menesses an

¹ The office of 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. La. R.S. 13:713(A). The commissioner's written findings and recommendations are submitted to a district court judge, who may accept, reject, or modify them. La. R.S. 13:713(C)(1), (2), & (5).

appeal.²

On appeal, Mr. Menesses asserts that the district court erred in concluding that, because of parole restrictions, he must serve his entire 15-year sentence for being a felon in possession of a firearm, because he is eligible for good time diminution of sentence pursuant to La. R.S. 15:571.3 on the 15-year sentence, which made him eligible for parole at an earlier date on his 17-year sentence for simple burglary of an inhabited dwelling.

In examining the rationale expressed in the commissioner's report, it appears clear that the commissioner misconstrued Mr. Menesses' argument, believing he was asserting that his alleged goodtime eligibility on his possession of a firearm sentence made him parole eligible for that offense. Mr. Menesses' actual argument was that once he reached the date he would have been eligible for good time release on the possession of a firearm sentence if not for the sentences on his other convictions, the parole ineligibility on his possession of a firearm sentence should no longer control his parole eligibility on his sentence for simple burglary under La. R.S. 14:62.2, which his master prison record indicates is parole eligible. The only rationale articulated by the commissioner is that the simple burglary sentence prevented Mr. Menesses' goodtime release on the possession of a firearm sentence, while the parole ineligibility on the possession of a firearm sentence prevented his release on parole on the simple burglary sentence. Neither the commissioner nor the DPSC has pointed out any departmental rules or regulations or any other authority either supporting or requiring this result. The DPSC has filed no brief in this appeal responding to Mr. Menesses' argument.

Accordingly, while expressing no opinion on the merits of Mr. Menesses' argument, because the district court apparently never considered this argument and

² Mr. Menesses had previously filed an application for supervisory writs with this court which was denied on June 17, 2016. **Joshua Menesses v. Louisiana Department of Public Safety and Corrections**, 2016 CW 0342 (La. App. 1 Cir. 6/17/16).

the record is insufficient to explain the basis for and correctness of the DPSC's calculations, this matter is remanded to the district court for consideration of the actual argument raised by Mr. Menesses in his petition for judicial review, as noted herein.

CONCLUSION

For the foregoing reasons, the case is remanded to the district court with instructions. An assessment of costs of the appeal is deferred until there is a ruling on the merits of the case.

REMANDED WITH INSTRUCTIONS.