

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 0961

EDWARD SIMMONS

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment rendered FEB 20 2018.

Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. C639240
Honorable Donald Johnson, Judge

EDWARD SIMMONS
ANGOLA, LA

WILLIAM L. KLINE
BATON ROUGE, LA

PRO SE
PLAINTIFF-APPELLANT

ATTORNEY FOR
DEFENDANT-APPELLEE
LOUISIANA DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS

BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

PETTIGREW, J.

Edward Simmons, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals the dismissal, with prejudice, of his petition for judicial review of Disciplinary Board Appeal (DBA) number LSP-2015-0005-W. In that disciplinary proceeding, Simmons pled guilty to violating Rule 10 (Fighting), and received a sentence of custody change to Camp J Level 1 (suspended ninety days) and twelve weeks loss of yard privileges. Simmons appealed the matter to the Warden, and the decision was upheld. Simmons then filed a petition for judicial review in the Nineteenth Judicial District Court, in which he sought release from Camp J, expungement of this DBA decision from his record, and punitive damages. Pursuant to the recommendation of the Commissioner, Simmons's petition for judicial review was dismissed for failure to exhaust his administrative remedies in a November 4, 2015 judgment. On appeal, this court found that Simmons was improperly precluded from exhausting his administrative remedies by DPSC and, under the circumstances, the district court erred in dismissing his petition for judicial review. The November 4, 2015 judgment was vacated, and the matter was remanded to the district court. **Simmons v. Louisiana Department of Public Safety and Corrections**, 16-0401 (La. App. 1 Cir. 12/22/16), 209 So.3d 417.

Following remand, Simmons's petition for judicial review was again referred to a Commissioner of the district court for screening pursuant to Louisiana Revised Statutes 15:1178 and 1188. The Commissioner issued an amended screening report, recommending that Simmons's suit be dismissed for failure to state a cause of action under Louisiana Revised Statutes 15:1177(A)(9), because no substantial rights were involved in the matter since Simmons did not lose good time nor did he suffer any other atypical punishment for the disciplinary violations. Following de novo review of the record, the district court adopted the Commissioner's written recommendation and dismissed Simmons's suit in an April 7, 2017 screening judgment. Simmons appealed.

Courts may intervene and reverse or modify the DPSC's decisions in disciplinary cases only where the petitioner's substantial rights have been prejudiced. See La. R.S.

15:1177(A)(9); see also La. R.S. 15:1178(B) and 1188(A). Here, the disciplinary proceeding resulted in a change in Simmons's custody status and temporary loss of yard privileges. It is well settled that a change of custody status and loss of yard privileges do not constitute atypical or significant hardships in relation to the ordinary incidents of prison life and do not prejudice an inmate's substantial rights. See **Sandin v. Conner**, 515 U.S. 472, 484-86, 115 S.Ct. 2293, 2300-01, 132 L.Ed.2d 418 (1995); **Robinson v. Rader**, 14-0333, p. 2 (La. App. 1 Cir. 11/20/14), 167 So.3d 780, 781; **Harris v. Cain**, 10-1474, p. 2 (La. App. 1 Cir. 2/11/11), 2011WL846078 (not reported). Because the change in custody status and loss of yard privileges do not affect substantial rights, the district court did not err in dismissing Simmons's claim for failing to state a cause of action. See La. R.S. 15:1177(A)(9), 1178, and 1188(A).

The district court's judgment is affirmed. This memorandum opinion is issued in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1.B. Costs of this appeal are assessed to appellant, Edward Simmons.

AFFIRMED.