

NOT DESIGNATED FOR PUBLICATION

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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 0302

MELVIN DURET, JR.

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: SEP 24 2018

* * * * *

On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C647884

Honorable Donald Johnson, Judge Presiding

* * * * *

Melvin Duret, Jr.
Cottonport, LA

Plaintiff/Appellant
In Proper Person

Debra A. Rutledge
Baton Rouge, LA

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

* * * * *

BEFORE: WHIPPLE, C.J., McCLENDON, and HIGGINBOTHAM, JJ.

Higginbotham, J. concurs.

WHIPPLE, C.J.

Melvin Duret, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the DPSC”), appeals a judgment of the district court, dismissing his petition for judicial review. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Melvin Duret is currently serving a fifteen-year prison sentence, imposed on June 21, 2010, for possession with intent to distribute cocaine for which he was sentenced as a habitual offender. On December 12, 2014, Duret filed an application for ameliorative penalty consideration (Form B-01-007-A, as promulgated by the DPSC). The request was denied on the stated basis that Duret does not meet the criteria for ameliorative penalty consideration because he was sentenced **after** June 15, 2001.

Thereafter, Duret filed a formal written request for relief, pursuant to LSA-R.S. 15:1171, *et seq.*, alleging that the DPSC abused its authority, misinterpreted the law, issued defective application forms for ameliorative penalty consideration, and denied him of his rights and benefits.¹

The DPSC denied Duret’s request, stating in its first-step response that Duret does not meet the statutory criteria for ameliorative penalty consideration because he was sentenced after June 15, 2001. Duret then filed a second-step complaint, which the DPSC again denied, stating in pertinent part:

¹Louisiana Revised Statutes 15:1171-1179, the Corrections Administrative Remedy Procedure Act (“CARP”), provides that the DPSC or sheriff may adopt administrative remedy procedures for receiving, hearing, and disposing of any and all complaints and grievances by offenders against the state, the governor, the DPSC or its employees. The adopted procedures are the exclusive remedy for handling complaints and grievances to which they apply. LSA-R.S. 15:1171. The promulgated rules and procedures are set forth in Section 325 of Title 22, Part I of the Louisiana Administrative Code. Pursuant to these rules, offenders must use a two-step administrative review process before they can proceed with a suit in federal or state court. *See* LSA-R.S. 15:1176; LAC 22:I.325(J); *Dickens v. Louisiana Correctional Institute for Women*, 2011-0176 (La. App. 1st Cir. 9/14/11), 77 So. 3d 70, 74; *Edwards v. Bunch*, 2007-1421 (La. App. 1st Cir. 3/26/08), 985 So. 2d 149, 152-53.

Ameliorative Penalty Consideration is to offer relief to those offenders who [were] sentenced prior to 2001 when the minimum and maximum of sentences were more restrictive. You were sentenced after the reduction in sentence penalties. Therefore, you are not considered eligible for Ameliorative Penalty Consideration. No further investigation is needed.

After exhausting his administrative remedies, Duret filed a petition for judicial review in the Nineteenth Judicial District Court for East Baton Rouge Parish.² Duret alleged that the statute providing for ameliorative penalty consideration does not restrict its application to prisoners who committed crimes after June 15, 2001, and therefore, he is entitled to ameliorative penalty consideration.

In response to Duret's petition, the DPSC answered, generally denying Duret's allegations and specifically denying that Duret is eligible for ameliorative penalty consideration. The DPSC also provided the district court with a copy of the administrative record of the proceedings under review, as required by LSA-R.S. 15:1177(A)(3).

The commissioner conducted a hearing on the matter, wherein Duret appeared via video and counsel for the DPSC appeared in open court.³ After the presentation of argument by both parties, the commissioner issued a report on November 3, 2017, recommending that the district court affirm the DPSC's

²Louisiana Revised Statutes 15:1177(A) provides that any offender who is aggrieved by an adverse decision, excluding decisions relative to delictual actions for injury or damages, by the Department of Public Safety and Corrections or a contractor operating a private prison facility rendered pursuant to any administrative remedy procedures under this Part may, within thirty days after receipt of the decision, seek judicial review of the decision only in the Nineteenth Judicial District Court or, if the offender is in the physical custody of the sheriff, in the district court having jurisdiction in the parish in which the sheriff is located.

³The office of the commissioner of the Nineteenth Judicial District Court was created by LSA-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 court judge, who may accept, reject, or modify them. LSA-R.S. 13:713(C)(5).

decision and dismiss Duret's petition with prejudice, at his costs. By judgment signed on December 11, 2017, the district court adopted the commissioner's report and dismissed Duret's petition with prejudice, at his costs.

Duret now appeals, asserting that the district court "manifestly erroneously interpreted Louisiana Legislative law of Act. No. 45, Senate Bill No. 126 of 2006 Regular Session, by restricting application of the [a]meliorative [p]enalty [c]onsideration under [LSA-]R.S. 15:308, with regards to this case at issue."

LAW AND ANALYSIS

Duret's complaint is essentially that the DPSC has arbitrarily denied him a hearing on his application for ameliorative penalty consideration.⁴ Louisiana Revised Statute 15:308, entitled "Ameliorative penalty provisions; retroactivity; amendment of sentence; time limitations," provides:

A. (1) The legislature hereby declares that the provisions of Act No. 403 of the 2001 Regular Session of the Legislature provided for more lenient penalty provisions for certain enumerated crimes and that these penalty provisions were to be applied prospectively.

(2) The legislature hereby further declares that Act No. 45 of the 2002 First Extraordinary Session of the Legislature revised errors in penalty provisions for certain statutes which were amended by Act No. 403 of the 2001 Regular Session of the Legislature and that these revisions were to be applied retroactively to June 15, 2001, and applied to any crime committed subject to such revised penalties on and after such date.

B. In the interest of fairness in sentencing, the legislature hereby further declares that the more lenient penalty provisions provided for in Act No. 403 of the 2001 Regular Session of the Legislature and Act No. 45 of the 2002 First Extraordinary Session of the Legislature shall apply to the class of persons who committed crimes, who were convicted, or who were sentenced according to the following provisions: R.S. 14:56.2(D), 62.1(B) and (C), 69.1(B)(2), 70.1(B), 82(D), 91.7(C), 92.2(B), 92.3(C), 106(G)(2)(a) and (3), 106.1(C)(2), 119(D), 119.1(D), 122.1(D), 123(C)(1) and (2), 352, and 402.1(B), R.S. 15:529.1(A)(1)(b)(ii) and (c)(ii), 1303(B), and 1304(B), R.S. 27:262(C), (D), and (E), 309(C), and 375(C), R.S. 40:966(B), (C)(1), (D), (E), (F) and (G), 967(B)(1), (2), (3), and (4)(a) and (b), and

⁴Although there are several references to Duret filing multiple applications, there is only one application, dated December 12, 2014, in the record of these proceedings.

(F)(1), (2), and (3), 979(A), 981, 981.1, 981.2(B) and (C), and 981.3(A)(1) and (E), and Code of Criminal Procedure Article 893(A) **prior to June 15, 2001**, provided that such application ameliorates the person's circumstances.

C. Such persons shall be entitled to apply to the committee on parole pursuant to R.S. 15:574.2.^[5]

(Emphasis added.)

Louisiana Revised Statute 15:308 was enacted by Acts 2006, No. 45, §1, as noted by Duret in his assignment of error. In Weaver v. LeBlanc, 2009-0244 (La. App. 1st Cir. 9/14/09), 22 So. 3d 1014, 1016, writ denied, 2009-2290 (La. 10/1/10), 45 So. 3d 1090, this court explained the history of LSA-R.S. 15:308, adopting the commissioner's report issued therein and stating as follows:

In 2001, the Louisiana Legislature passed a single piece of legislation establishing the Risk Review Panel and also reducing numerous previously mandated criminal sentences. This was accomplished by Act 403, which became effective on June 15, 2001. Act 403 amended the penalty provisions of numerous criminal statutes, including the penalty provisions of R.S. 15:529.1—the habitual offender statute—for third and fourth felony offenders (such as the Petitioner in this case), wherein life sentences were mandated. At the same time, that Act also enacted La. Rev. Stat. 15:574.22, which *created* a Risk Review Panel and listed as its primary purpose to “evaluate the risk of danger” certain convicted individuals would pose to society if released from confinement and, in its discretion make recommendations to the Parole and Pardon Boards.

* * *

Subsequently, in 2006, the legislature enacted R.S. 15:308 which made the previous sentence reductions in Acts 403 and 45 of 2001 and 2002 respectively retroactively applicable to those inmates sentenced prior to 2001—which includes the Petitioner. It also required that anyone whose sentence would have been ameliorated by the amended sentences *could apply* to the Risk Review Panel in

⁵Louisiana Revised Statute 15:574.2, governing the committee on parole and Board of Pardons, provides in pertinent part:

I. (1) In addition to any duties set forth in the provisions of this Section, the committee on parole shall evaluate any application filed pursuant to R.S. 15:308 and, taking into consideration the risk of danger the applicant would pose to society if released from confinement, shall make recommendations to the Board of Pardons as to whether the applicant is eligible for a reduction in sentence pursuant to R.S. 15:308.

accordance with R.S. 15:574.22. The Court notes that the statute also requires the Panel to consider any *eligible* inmates, such as the Petitioner herein, for *possible* recommended leniency.[Footnote omitted.][⁶]

After carefully examining the language of LSA-R.S. 15:308, we find that its provisions are unambiguous. Indeed, reading subsection (A) and (B) of LSA-R.S. 15:308 *in pari materia*, the statute unambiguously provides that only those persons who committed crimes, were convicted, or were sentenced prior to June 15, 2001 may apply to the committee on parole for ameliorative relief.

As it is undisputed in the instant case that Duret was sentenced after June 14, 2001, namely, on June 21, 2010, he is not entitled to ameliorative penalty consideration as provided for in LSA-R.S. 15:308. Accordingly, we find no error in the December 11, 2017 judgment of the district court, which correctly affirmed the DPSC's decision on this issue, and we hereby affirm the district court's judgment. All costs are assessed against appellant, Melvin Duret, Jr.

AFFIRMED.

⁶Following this court's decision in Weaver, the legislature amended subsection (C) of LSA-R.S. 15:308 to provide that an inmate seeking to have his sentenced ameliorated in accordance with the provision of LSA-R.S. 15:308 shall be entitled to apply to the committee on parole pursuant to LSA-R.S. 15:574.2, rather than a Risk Review Panel. See Acts 2014, No. 340, §1.