

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2020 CA 0301

EDWARD SIMMONS

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

CONSOLIDATED WITH

NO. 2020 CA 0302

EDWARD SIMMONS

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment Rendered: DEC 30 2020

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case Nos. C671143 and C673485

The Honorable Janice Clark, Judge Presiding (C671143)
The Honorable Wilson E. Fields, Judge Presiding (C673485)

* * * * *

Edward Simmons
St. Gabriel, Louisiana

Plaintiff/Appellant
Edward Simmons

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

* * * * *

BEFORE: HIGGINBOTHAM, THERIOT, AND WOLFE, JJ.

MSH.
TMH
W

THERIOT, J.

Edward Simmons, pro se, appeals the judgment of the Nineteenth Judicial District Court dismissing without prejudice his petition for writ of mandamus for lack of subject matter jurisdiction based on a failure to exhaust administrative remedies in accordance with La. R.S. 15:1172. For the following reasons, we reverse and remand with instructions.

FACTS AND PROCDURAL HISTORY

Edward Simmons is currently an inmate at Elayn Hunt Correctional Center. However, it appears that many of the events described occurred when Simmons was an inmate at the Louisiana State Penitentiary. Simmons alleges that, on November 2, 2017, prison personnel took six bundles of personal property from him and placed them in storage. According to Simmons, only two of the six bundles were returned to him. Simmons informed a captain at the prison that he was still missing four bundles of personal property, but the captain allegedly told Simmons that he could only find the two bundles that had been returned to him.

On November 13, 2017, Simmons filed a lost property claim with the warden's office. On December 5, 2017, the lost property claim was allegedly accepted and assigned as LSP No. 2017-2580. According to Simmons, the head warden of the facility had forty days to render a decision but failed to respond. Simmons contacted several prison employees, but asserts that he did not receive any response.

On July 3, 2018, Simmons filed a petition for writ of mandamus based on the prison administration's continued failure to address his lost property claim. In his petition for writ of mandamus, Simmons sought to have a decision rendered on his lost property claim and to be reimbursed for his lost property. On July 9, 2018,

the Commissioner of the Nineteenth Judicial District Court¹ ordered Simmons to show compliance within 15 days by filing written proof of exhaustion of LSP No. 2017-2580. The Commissioner informed Simmons that failure to show exhaustion of LSP No. 2017-2580 may result in dismissal of the suit at Simmons's cost.

In response to the order to show compliance, Simmons filed several pleadings reasserting the facts of this case and his arguments.² Simmons also submitted a copy of a handwritten lost personal property claim, dated November 13, 2017 and numbered as LSP No. 2017-5280. Additionally, Simmons submitted copies of his letters to several prison employees. Simmons also provided an administrative remedy procedure and property claims input screen, which listed a "date received" as June 12, 2018, and which pertained to his complaints that a prison employee was not processing his administrative remedy procedure claims, backlogs, or property claims on time.

On April 30, 2019, the Commissioner issued a screening report in which she recommended that Simmons's claim be dismissed without prejudice based on his failure to prove that he had exhausted the administrative remedy procedure. The Commissioner acknowledged that Simmons had responded to the order to show compliance, but found that Simmons's response did not comply with La. R.S. 15:1178 and the local rules of court.

On May 31, 2019, the trial court adopted the written recommendation of the Commissioner and ordered that Simmons's petition for writ of mandamus be dismissed, in accordance with La. R.S. 15:1172(C), without prejudice, for lack of

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. See La. R.S. 13:713; *Hakim-El-Mumit v. Stalder*, 2003-2549 (La. App. 1 Cir. 10/29/04); 897 So.2d 112, 113 n. 1.

² It appears from the record that these documents were filed after the 15-day deadline provided by the Commissioner.

subject matter jurisdiction based on a failure to exhaust administrative remedies. This appeal followed.³

ASSIGNMENTS OF ERROR

Simmons does not assert any assignments of error, but argues that the Louisiana Department of Public Safety and Corrections (“the Department”) has refused to render a decision in LSP No. 2017-2580. According to Simmons, his lost property claim was accepted nearly three years ago, but no decision has been rendered.

Simmons further argues that the trial court erred when it treated his petition for writ of mandamus as an application for judicial review. Simmons also argues that the trial court erred in dismissing his petition for writ of mandamus due to lack of subject matter jurisdiction for failure to exhaust administrative remedies, because he has demonstrated all of the steps he took in his efforts to have the Department render a decision regarding his lost property claim.

STANDARD OF REVIEW

On appellate review of a district court’s judgment in a suit for judicial review under La. R.S. 15:1177, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. As such, the *de novo* standard of review shall be applied. *Greenhouse v. Louisiana Department of Public Safety and Corrections*, 2017-0316

³ This matter has been consolidated with 2020 CA 0302. On September 5, 2018, Simmons filed a petition for issuance of extraordinary writ of mandamus and order requesting that Doug Welborn, clerk of court of the Nineteenth Judicial District Court, be ordered to “perform his duties”. The trial court subsequently filed a rule to show cause asking Simmons to show cause in writing whether his September 5, 2018 petition for extraordinary writ of mandamus should be directed towards Doug Welborn, as his caption indicated, or towards the Department of Corrections. Simmons responded on October 10, 2018, clarifying that his September 5, 2018 petition for extraordinary writ of mandamus is directed towards Doug Welborn as clerk of court.

On April 29, 2019, the trial court signed a motion and order to consolidate, noting that Simmons had filed multiple petitions for writ of mandamus which arise out of the same grievance, and finding that, in the interest of expediency and in consideration of the trial court’s limited time and resources, the consolidation of these petitions would be in the best interest of all parties.

(La. App. 1 Cir. 11/1/17); 2017 WL 4946864, at *2 (unpublished), *writ denied*, 2017-2122 (La. 1/8/19); 259 So.3d 1021.

DISCUSSION

Judicial review of inmate lost property claims is governed by La. R.S. 15:1177 of the Corrections Administrative Remedy Procedure (“ARP”). *Curry v. Cain*, 2005-2251 (La. App. 1 Cir. 10/6/06); 944 So.2d 635, 638. Accordingly, a reviewing court may reverse or modify an administrative 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 (f) manifestly erroneous in view of the reliable, probative and substantial evidence of the whole record. *Lewis v. Louisiana Department of Public Safety and Corrections*, 2019-1693 (La. App. 1 Cir. 8/5/20); ___ So.3d ____, 2020 WL 4498170, at *2, citing La. R.S. 15:1177(A)(9).

We note as a preliminary matter that the general ARP procedure does not apply to lost property claims. Rather, lost property claims are handled through a specialized administrative remedy procedure, and the procedure for lost property claims has no similar provisions setting forth deadlines within which the DPSC must act or for allowing the inmate to proceed to the next step at the expiration of any particular time limit. See LAC 22:1:325(L); *Boudreaux v. Louisiana Department of Public Safety and Corrections*, 2016-0995 (La. App. 1 Cir. 6/2/17); 222 So.3d 63, 66. Accordingly, Simmons’s assertion that the warden of the Louisiana State Penitentiary had forty days to render a decision regarding Simmons’s lost property claim is incorrect.

Regarding Simmons's petition for writ of mandamus, the Commissioner's

Report states:

According to his petition, [Simmons] seeks a mandamus order directing the Department to render a decision in [LSP No. 2017-2580] and to return his lost property. However, a lost property claim is subject to the Department's administrative procedure, which would require [Simmons] to file an appeal of judicial review and attach a second step response from the Department. Therefore, this Commissioner issued a compliance order to be served upon [Simmons]. Although [Simmons] responded to that order, he still failed to file his petition on the court approved [Petition for Judicial Review] form and failed to attach proof of exhaustion of the [ARP]. Subsequently, [Simmons's pleading] remains noncompliant to [La.] R.S. 15:1178 and the local rules of court. Thus, this suit, by virtue of [La.] R.S. 15:1172, is premature and must be dismissed for failure to exhaust resulting in a lack of subject matter (appellate) jurisdiction."

However, in *Foster v. Louisiana Dept. of Public Safety & Corrections*, 2010-1624 (La. App. 1 Cir. 3/25/11); 2011 WL 1103352, at *1 (unpublished), this court stated that the remedy for an inmate whose lost property claim was never responded to or acted upon was "to file an application for mandamus to force the proper administrative official to respond." See also La. Code Civ. P. arts. 3861-3866. This was reiterated in a subsequent opinion, *Foster v. Louisiana Dept. of Public Safety & Corrections ex rel. Louisiana State Penitentiary*, 2012-0349 (La. App. 1 Cir. 11/2/12); 2012 WL 5386608, at *3 (unpublished).

In the present case, Simmons filed a petition for writ of mandamus seeking to have a decision rendered upon his lost property claim and reimbursement for the items lost. Although it is unclear whether Simmons's property can or will be returned to him, we find that he is entitled to a response regarding his lost property claim, and that he followed the proper procedure in seeking to force the proper administrative official to respond, pursuant to *Foster*, 2011 WL 1103352, at *1, and *Foster*, 2012 WL 5386608, at *3. Thus, we reverse the trial court's judgment dismissing without prejudice Simmons's petition for writ of mandamus for lack of subject matter jurisdiction based on a failure to exhaust administrative remedies in

accordance with La. R.S. 15:1172. We remand this case so that Simmons's petition for writ of mandamus may be properly considered by the Commissioner and the trial court.

DECREE

For the above and foregoing reasons, we reverse the judgment of the Nineteenth Judicial District Court dismissing without prejudice Edward Simmons's petition for writ of mandamus for lack of subject matter jurisdiction based on a failure to exhaust administrative remedies in accordance with La. R.S. 15:1172. This matter is remanded to the trial court with instructions to consider the merits of Simmons's petition for writ of mandamus. Costs in the amount of \$1,357.00 are assessed to the Louisiana Department of Public Safety and Corrections.

REVERSED AND REMANDED WITH INSTRUCTIONS.