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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2020 CA 0444

DERRICK JEROME ALLEN

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS

JUDGMENT RENDERED: DEC 30 2020

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge • State of Louisiana
Docket Number C685412 • Division 24

The Honorable Donald R. Johnson, Judge Presiding

Derrick Jerome Allen, D.O.C. #295151
Louisiana State Penitentiary
Angola, Louisiana

APPELLANT
PLAINTIFF—*Pro Se*

Heather C. Hood
Baton Rouge, Louisiana

ATTORNEY FOR APPELLEE
DEFENDANT—Louisiana
Department of Public Safety &
Corrections

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

WELCH, J.

Derrick Jerome Allen, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (“the Department”) and confined to the Louisiana State Penitentiary in Angola, Louisiana, appeals a judgment of the district court dismissing his petition for judicial review of disciplinary board appeal number LSP-2019-0174.

Allen was issued a disciplinary rule violation report for violating Rule #3 (Defiance) and Rule #21G (Aggravated Sex Offense). Following a hearing before the prison disciplinary board, Allen was found guilty of the offenses. The penalties imposed were a custody change to maximum working cellblock (for violating Rule #3) and twelve weeks loss of canteen privileges (for violating Rule #21G). He appealed that decision first to the Warden and then to the Secretary of the Department, and the appeals were denied.

Allen then filed a petition for judicial review in the district court. The commissioner assigned to the matter issued a report recommending that Allen’s petition be dismissed for its failure to state a cause of action for which relief could be granted. In the commissioner’s report, the commissioner noted that the penalties imposed were a custody change to maximum working cell block and twelve weeks loss of canteen privileges and that Allen was afforded a hearing before the disciplinary board and appeals of that ruling to both the Warden and the Secretary of the Department. The commissioner further noted that the penalties imposed were valid, authorized penalties for the rules violated by Allen and that it did not affect the length of Allen’s sentence or present any other drastic departure from expected prison life. Therefore, the commissioner found that Allen failed to set forth a substantial right violation and, as such, the district court lacked authority to intervene, reverse, or otherwise review the claims made by Allen. Based on this finding, the commissioner recommended that the district court dismiss Allen’s suit

with prejudice, at his cost, pursuant to La. R.S. 15:1177(A)(9), for failing to raise a substantial rights violation and, thus, failing to state a cause of action or raise a cognizable claim. Thereafter, on March 15, 2020, the district issued and signed a judgment in conformity with the recommendation of the commissioner, dismissing Allen's suit with prejudice.

After a thorough review of the record, we find no error in the judgment of the district court or in the analysis and conclusions of the commissioner, which the district court adopted. As recognized by the commissioner's report, in order for the district court to reverse or modify the decision of the Department, Allen had to first show how his substantial rights were prejudiced by the decision. See La. R.S. 15:1177(A)(9).¹ The disciplinary sentence of custody change to maximum working cellblock and twelve weeks loss of canteen privileges is not unusual or a significant hardship in relation to the ordinary incidents of prison life and did not prejudice Allen's substantial rights. In the absence of prejudice to Allen's substantial rights, modification or reversal of the disciplinary action by the district court (or this Court) is not warranted under the law. Therefore, we affirm the judgment of the district court, dismissing Allen's petition for judicial review of disciplinary board number LSP-2019-0174 and issue this opinion in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.2(A)(2),(5), and (6). Costs of this appeal are assessed to the appellant, Derrick Jerome Allen.

¹ Louisiana Revised Statutes 15:1177(A)(9) provides, in pertinent part:

- The court may reverse or modify the decision [of the Department] **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.
 - (f.) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record.

(Emphasis added).

AFFIRMED.