

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2020 CA 0477

WILLIE DILLON

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

Judgment rendered: DEC 30 2020

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On Appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C687454, Div. / Sec. 21 "D"

The Honorable Janice Clark, Judge Presiding

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Willie Dillon #305881
David Wade Correctional Center
Homer, Louisiana

In Proper Person

Jonathan R. Vining
Baton Rouge, Louisiana

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

* * * * *

BEFORE: McDONALD, HOLDRIDGE, AND PENZATO, JJ.

ahp Penzato, J., concurs

HOLDRIDGE, J.

Petitioner, Willie Dillon, an inmate in the custody of the Department of Public Safety and Corrections (the Department), appeals a judgment of the district court dismissing without prejudice his petition for judicial review for lack of subject matter jurisdiction. For the reasons that follow, we vacate the judgment of the district court and remand for further proceedings.

DISCUSSION

On September 5, 2019, Willie Dillon filed a petition for judicial review of Administrative Remedy Procedure (ARP) request No. DWCC-2018-0545, requesting an award of \$5,000.00 for the mishandling of his mail. Mr. Dillon stated that he received his first step response form, dated December 21, 2018, on January 8, 2019. The first step response form stated that if Mr. Dillon was not satisfied with the response, he “may go to Step Two by ... forwarding to the ARP Screening Officer ... within 5 days of [his] receipt of this decision.” On January 9, 2019, Mr. Dillon completed his second step response.¹ Mr. Dillon requested an update on the second step of DWCC-2018-0545 on January 27, 2019 and August 18, 2019, noting that he had not yet received a decision on the second step. On August 22, 2019, Mr. Dillon was notified that his “ARP was not sent to second step. [The Department did] not find anything showing where [he] sent it back to go to second step.” On August 28, 2019, he was further notified that he had five days from the date he received his first step response to send it to the second step. Because that time frame was past, it could not be sent to the second step.

On September 11, 2019, the Commissioner of the District Court² issued an order for compliance that instructed Mr. Dillon to file written proof of exhaustion

¹ We note that Mr. Dillon’s second step response was incorrectly dated January 9, 2018.

² 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

of ARP No. DWCC-2018-0545 within fifteen days in accordance with La. R.S. 15:1172³ and 15:1184 and 19th Judicial District Court Rules. The order further stated that failure to show exhaustion of ARP No. DWCC-2018-0545 may result in dismissal of the suit at petitioner's cost. Mr. Dillon filed a response to the order of compliance; however, he did not submit proof of exhaustion of ARP No. DWCC-2018-0545.

On October 3, 2019, the Commissioner recommended that Mr. Dillon's petition for judicial review be dismissed without prejudice for the failure to properly exhaust administrative remedies resulting in a lack of subject matter jurisdiction. The Commissioner stated that a "final response from the Secretary [was] required before the matter [could] be heard in any Court on the merits. Absent exhaustion, through the Department's administrative remedies, statutory law and jurisprudential authority require[d] that the suit be dismissed." On October 25, 2019, the district court signed a judgment adopting the written recommendation of the Commissioner and dismissing without prejudice Mr.

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

³ Louisiana Revised Statutes 15:1172 states, in pertinent part:

B. (1) An offender shall initiate his administrative remedies for a delictual action for injury or damages within ninety days from the day the injury or damage is sustained.

(2) The department is authorized to establish deadlines for an offender to initiate administrative remedies for any nondelictual claims.

(3) The department is authorized to establish deadlines for the procedures and processes contained in the administrative remedy procedure provided in LAC 22:I.325.

C. If an offender fails to timely initiate or pursue his administrative remedies within the deadlines established in Subsection B of this Section, his claim is abandoned, and any subsequent suit asserting such a claim shall be dismissed with prejudice. If at the time the petition is filed the administrative remedy process is ongoing but has not yet been completed, the suit shall be dismissed without prejudice.

Dillon's petition for judicial review of No. DWCC-2018-0545 for lack of subject matter jurisdiction. This appeal followed.⁴

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 (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

The Corrections Administrative Remedy Procedure set forth in La. R.S. 15:1171, *et seq.*, provides that the Department may adopt an administrative remedy procedure for receiving, hearing, and disposing of any and all complaints and grievances by offenders against the state, the governor, the Department, or its employees. The adopted procedures are the exclusive remedy for handling the complaints and grievances to which they apply. *Collins v. Vanny*, 2014-0675 (La. App. 1 Cir. 1/15/15), 169 So.3d 405, 406, citing La. R.S. 15:1171.

The rules and procedures promulgated by the Department are set forth in Section 325 of Title 22, Part I of the Louisiana Administrative Code. Pursuant to these rules, offenders must exhaust a two step ARP before they can proceed with a suit in federal or state court. *Collins*, 169 So.3d at 406, citing La. R.S. 15:1176 and LAC 22:I.325F(3)(a)(viii). When an inmate has initiated the first step of an ARP,

⁴ We note that Mr. Dillon's *pro se* brief does not comply with the requirements of the Uniform Rules, Courts of Appeal, Rule 2-12.4, because it has no listed assignments of error. However, this court reads *pro se* filings indulgently and attempts to construe briefs as though assignments of error were properly raised. See *Reed v. State, Dept. of Public Safety and Corrections*, 2014-1468 (La. App. 1 Cir. 4/24/15), 2015 WL 1882725, *1 (unpublished).

the warden is required to respond within 40 days from the date the request is received at the first step, using the first step response. *Collins*, 169 So.3d at 406, citing LAC 22:I.325J(1)(a)(ii). An inmate who is not satisfied with the warden's first step response may proceed to the second step ARP and appeal to the secretary of the Department. The final decision of the secretary or his designee shall be made and the offender shall be sent a response within 45 days from the date the request is received at the second step, utilizing the second step response. *Collins*, 169 So.3d at 406, citing LAC 22:I.325J(1)(b)(ii). No more than 90 days from the initiation to completion of the process shall elapse, unless an extension has been granted. Absent such an extension, expiration of response time limits shall entitle the offender to move on to the next step in the process. *Collins*, 169 So.3d at 406-07, citing LAC 22:I.325J(1)(c).

If an inmate fails to exhaust available administrative remedies, the district court and the appellate court lack subject matter jurisdiction to review the claim. *Collins*, 169 So.3d at 407; *Dickens v. Louisiana Correctional Institute for Women*, 2011-0176 (La. App. 1 Cir. 9/14/11), 77 So.3d 70, 75. However, this court has ruled that when the Department has effectively precluded an inmate from proceeding to review by the district court by failing to issue its decision as directed by the ARP provisions, the administrative remedies will be considered to have been pursued by the inmate to the fullest extent possible under the circumstances, and the inmate will be allowed to seek a legal remedy in the district court or to have the matter remanded for consideration by the Department. *Collins*, 169 So.3d at 407; *Black v. Heyse*, 2013-0652 (La. App. 1 Cir. 5/19/14), 2014 WL 3534013, at *3 (unpublished).

In this case, the Commissioner's recommendation stated that Mr. Dillon timely indicated his wish to proceed to step two, but failed to provide proof that he

exhausted ARP request No. DWCC-2018-0545 through the administrative remedy process. However, it appears from the record that Mr. Dillon timely indicated his wish to proceed to step two, but never received a response to his second step request for ARP request No. DWCC-2018-0545 from the Department. According to Mr. Dillon, he took all the proper steps necessary to provide the district court with fair responses for his failure to present written proof of exhaustion of ARP No. DWCC-2018-0545.

Because the record is unclear as to the Department's decision on Mr. Dillon's second step response, we must remand this matter to the Nineteenth Judicial District Court for a determination of whether ARP request No. DWCC-2018-0545 was properly acted upon. Accordingly, we vacate the October 25, 2019 judgment and remand to the matter to the Nineteenth Judicial District Court for further consideration pursuant to this opinion.

CONCLUSION

Based on the foregoing, we vacate the judgment of the district court and this matter is remanded to the Nineteenth Judicial District Court for further proceedings consistent with this opinion. Costs of this appeal shall await final disposition in this matter.

JUDGMENT VACATED; REMANDED.